

No. 10316

United States
Circuit Court of Appeals

vol
2329

For the Ninth Circuit.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,
owner of THE SS "PENNSYLVANIAN", her engines, boilers, etc.,
Appellant,

vs.

WESTERN TRANSPORTATION CO., a corporation, owner of the
Steamboat "BARRY K", etc., and Barges 22 and 24,
Appellee,

And

WESTERN TRANSPORTATION CO., a corporation, owner of the
Steamboat "BARRY K", etc., and Barges 22 and 24,
Appellant,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,
owner of THE SS "PENNSYLVANIAN", her engines, boilers, etc.,
Appellee.

Apostles on Appeal

In Two Volumes

VOLUME I

Pages 1 to 462

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF THE ATTOR-
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ERSKINE WOOD,

Yeon Building, Portland, Oregon,
for Appellant, American-Hawaiian Steam-
ship Company, Respondent and claimant
of the "Pennsylvanian", and Appellee on
the cross-appeal.

DEY, HAMPSON and NELSON,

CLARENCE J. YOUNG and

RICHARD B. MAXWELL,

Pacific Building, Portland, Oregon,
for Appellee, Western Transportation
Company, Libelant, and Appellant on
cross-appeal.

In the District Court of the United States
for the District of Oregon
March Term, 1941.

Be It Remembered, That on the 1st day of May, 1941, there was duly filed in the District Court of the United States for the District of Oregon, a Libel in rem and in personam, in words and figures as follows, to wit: [2*]

In the District Court of the United States
for the District of Oregon
In Admiralty
No. 727

WESTERN TRANSPORTATION CO., a
corporation,

Libelant,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COM-
PANY, a corporation, and the SS. "PENNSYLVANIAN", her engines, boilers, etc.,
Respondents.

LIBEL IN REM AND IN PERSONAM

To: The Honorable James A. Fee and the Honorable Claude McColloch, Judges of the District Court of the United States for the District of Oregon,

*Page numbering appearing at foot of page of original certified Transcript of Record.

IN ADMIRALTY SITTING

The libel of Western Transportation Co., in its own behalf as owner of the Str. "Barry K"; and Barges Nos. 22 and 24, as bailee of the cargo laden thereon, and in behalf of its underwriters, against American-Hawaiian Steamship Company in personam and in rem against the SS "Pennsylvanian", her engines, boilers, tackle, apparel, furniture and equipment, in a cause of tort, civil and maritime, respectfully shows as follows:

Article I.

At all times hereinafter mentioned libelant was and now is a corporation duly organized and existing under and by virtue of laws of the state of Oregon, and owner and operator of the sternwheel steam river tug "Barry K", and of two light draft barges bearing numbers 22 and 24 respectively. [3]

Article II.

At all times hereinafter mentioned, American-Hawaiian Steamship Company was and now is a corporation organized and existing under and by virtue of laws of the state of New Jersey, and authorized to do business and doing business in the state of Oregon, and having an office for the transaction of such business at Portland, Oregon, said American-Hawaiian Steamship Company being the owner and operator of the SS "Pennsylvanian", an ocean going steamer.

Article III.

Said SS "Pennsylvanian" is now in the port of

Astoria, Oregon, and within the jurisdiction of the United States District Court for the District of Oregon.

Article IV.

Shortly after midnight on February 1, 1941, said "Barry K" was being navigated at about six miles per hour in a southerly direction upstream on the Willamette River, a part of the navigable waters of the United States, enroute from Camas, Washington, to Portland, Oregon. Said "Barry K" was then with tow of said Barges Nos. 22 and 24, each loaded with paper, Barge No. 22 being made up on the port bow of the "Barry K", and Barge No. 24 being laid out on the port side thereof. The night was dark but clear and an easterly breeze was blowing.

Article V.

At said time the "Barry K" was equipped with proper and lawful lights for navigation at night upon the river and said lights were then burning brightly. She was also equipped with a proper and lawful whistle. At all times up to the collision hereinafter mentioned, a competent pilot was on the lookout and at the wheel of the "Barry K" and he, as well as the rest of the crew who were variously employed in their respective duties, were faithfully attending thereto. At all of said times the "Barry K" was properly [4] and lawfully proceeding on her course upstream.

Article VI.

At said time and during all years preceding, while river boats had been operating upon said river, it was unsafe and impracticable for river tugs such as the "Barry K", particularly with barges in tow, to proceed upstream at said place on the west side of the river. Said "Barry K" and tow was then proceeding up the east side of said river in accord with safety requirements and with the uniform practice of river boats with barges, which practice had existed for more than forty years prior thereto. Said practice and the basis therefor was well known to all Willamette River pilots.

Article VII.

At approximately 12:40 o'clock A. M., and while the "Barry K" was passing Post Office Bar Light No. 3, the green light and two white mast lights of a vessel proceeding downstream, which vessel later proved to be the SS "Pennsylvanian", appeared between a mile and a mile and a half ahead. The position and color of said lights indicated that said approaching vessel was proceeding along Post Office Range and was crossing the bow of said "Barry K" from east to west.

Article VIII.

When the two vessels were about a mile apart, the "Barry K" gave two short blasts of her whistle for a starboard passage, which the SS "Pennsylvanian" answered with one blast. Thereafter the

“Barry K” gave four short blasts of her whistle to signify danger or signals misunderstood. There was no response from the SS “Pennsylvanian”. During this time the “Barry K” was swinging to port, i. e., turning toward the east, for the purpose of getting into the clear of the main ship channel and reaching shallow water where she and her tows could proceed with safety and out of the path of the approaching steamer. During the same time, although [5] the SS “Pennsylvanian” could with complete safety have passed the “Barry K” to starboard, the SS “Pennsylvanian” nevertheless had changed her course and, in disregard of the “Barry K’s” signals, was turning easterly in the same direction the “Barry K” was turning, and was heading directly toward the “Barry K”.

Article IX.

The “Barry K” again gave two short blasts of her whistle for a starboard passing which the SS “Pennsylvanian” did not answer. The “Barry K” then gave another danger signal by four short blasts of her whistle, followed by two short blasts for a starboard passing, and stopped her engines. The SS “Pennsylvanian” being in relatively close proximity to the “Barry K” then gave three whistles indicating that her engines were full speed astern. The engines of the “Barry K” were then likewise put full speed astern, and three whistles were blown by her. The SS “Pennsylvanian” from the time she first turned the same direction as the

“Barry K” continued on said course directly toward the “Barry K” and its tows. The “Barry K” brought its tow to a complete stop in an effort to avoid a collision, but the oncoming SS “Pennsylvanian” nevertheless struck Barge No. 22 on its starboard side.

Article X.

Said collision was in no way due to fault on the part of the “Barry K”, its pilot, officers or members of its crew, but was due entirely to fault on the part of the SS “Pennsylvanian” and of those having charge of her navigation in the following particulars among others:

(1) She failed to give proper or any heed to the several whistle signals by the “Barry K” for a starboard passing.

(2) She failed to give proper or any heed to the danger signals given by the “Barry K”.

(3) She crossed the first starboard passing signal given by the “Barry K” with a port passing signal of her own. [6]

(4) Although she saw or ought to have seen the position of the “Barry K” as above described, she failed to take any proper steps to avoid collision.

(5) She failed to change her course to her port so as to avoid collision.

(6) After sighting the “Barry K” she changed

her course to starboard and continued thereon to the moment of collision.

(7) She failed, while yet a safe distance from the "Barry K" to slow down.

(8) She continued at an immoderate and unreasonable speed toward said "Barry K".

(9) Although at all times after the two vessels sighted each other, and up to the moment of the actual collision, there was adequate space in ship's channel to the west of the "Barry K" for the passage of the SS "Pennsylvanian" and no available space to the east of the "Barry K" for such passage, said SS "Pennsylvanian" nevertheless failed to take advantage of said circumstance.

(10) She took no timely steps to avoid collision.

(11) That said SS "Pennsylvanian" was negligent in other and further particulars of which libelant is not at present advised, and when so advised libelant will ask leave to offer evidence thereof, and amend its libel to conform to said evidence.

(12) No competent person was immediately available on the forecastle head of the SS "Pennsylvanian" to drop the anchors of said vessel in response to command from her bridge.

(13) No timely or any order was given by officers of the SS "Pennsylvanian" to drop anchor for the purpose of slowing or stopping said vessel and thus avoiding collision.

Article XI.

That by reason of said collision Western Transportation Co., a corporation, has suffered damage as near as can be presently estimated in the injury of said Barge No. 22 in an amount upwards [7] of \$12,200.00; in the injury to said "Barry K" in an amount upwards of \$425.00; in the loss to cargo on said Barges Nos. 22 and 24 in the sum upwards of \$11,400.00 and in demurrage respecting said Barge No. 22 and said "Barry K" in the aggregate sum upwards of \$1700.00.

Article XII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, libelant prays that it may have a decree against respondent American-Hawaiian Steamship Company for the amount of its damages and costs and for such other relief as to the Court may seem just and in accordance with the admiralty practice; and libelant further prays that process in due form of law according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the said SS "Pennsylvanian," her engines, boilers, tackle, apparel, furniture and equipment, and that all persons claiming any right, title or interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid, and that said vessel, her engines, boilers, tackle, ap-

parel, furniture and equipment may be condemned and sold to pay the amount due to libelant, with interest and costs, and that the Court will grant to libelant such other or further relief as in law and justice it may be entitled to receive.

DEY, HAMPSON & NELSON,
CLARENCE J. YOUNG,
RICHARD B. MAXWELL,
Proctors for Libelant.

State of Oregon,
County of Multnomah—ss.

I, R. L. West, being first duly sworn depose and say that I am the Secretary-Treasurer of Libeland Corp. in the abovde entitled.....; and that the foregoing libel in rem and in personam is true as I verily brlieve.

R. L. WEST

Subscribed and sworn to before me this 1st day of May, 1941.

[Seal] CLARENCE J. YOUNG,
Notary Public for the State of Oregon.

My commission expires Mar. 18, 1941.

[Endorsed]: Filed May 1, 1941. [8]

And afterwards, to wit, on the 1st day of May, 1941, there was duly filed in said Court, Libelant's Stipulation for Costs, in words and figures as follows, to wit: [9]

[Title of District Court and Cause.]

LIBELANT'S STIPULATION FOR COSTS

Whereas, a libel was filed in this Court on or about the 1st day of May, 1941, by Western Transportation Co., a corporation in personam against the American-Hawaiian Steamship Company, a corporation, and in rem against the SS "Pennsylvanian", her engines, boilers, tackle, apparel, furniture and equipment, for the reasons and causes in said libel mentioned, and praying for judgment and decree against libelant American-Hawaiian Steamship Company, a corporation, and that process may issue against the said SS "Pennsylvanian" her engines, boilers, tackle, apparel, furniture and equipment, and said respondents be required to appear and answer said libel; and the said libelant and Fidelity & Deposit Company of Maryland, Baltimore, Maryland, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libelant or its surety, execution may issue against their goods, chattels and lands for the sum of Two Hundred Dollars (\$200.00);

Now, Therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be and are bound in the sum of Two Hundred Dollars (\$200.00) conditioned that the libelant above named shall pay all such costs as shall be awarded against libelant

and/or the stipulator [10] undersigned, by this Court, or in case of appeal, by the Appellate Court.

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,
BALTIMORE, MARYLAND,
By CLARENCE D. PORTER,
State Resident Agent.

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,
BALTIMORE, MARYLAND,
By CLARENCE D. PORTER,

[Seal] Attorney-in-Fact.

[Endorsed]: Filed: May 1, 1941. [11]

And afterwards, to wit, on the 1st day of May, 1941, there was issued out of said Court, a Monition in personam, in words and figures, as follows, to wit: [12]

[Title of District Court and Cause.]

MONITION

The President of the United States of America
to the Marshal of the District of Oregon, or his
Deputy—Greeting:

Whereas, a libel was filed in the District Court of the United States for the District of Oregon, on the 1st day of May, 1941, by Western Transportation Co., a corporation, libelant, against American-Hawaiian Steamship Company, a cor-

poration, in a certain cause of tort civil and maritime, as more fully appears by the said Libel on file in the office of the Clerk of the said Court.

Now, therefore, you are hereby strictly enjoined and commanded that you cite said American-Hawaiian Steamship Company, a corporation, to appear before the Judges of the District Court of the United States for the District of Oregon, at the City of Portland in said District, on Monday the 2nd day of June, 1941, if it be a court day, or else on the court day next following, at ten o'clock in the forenoon of said day, then and there to answer unto said libelant, and further to do and receive in this behalf as to justice shall appertain. And that you duly certify to the Court aforesaid what you shall do in the premises together with these presents.

Witness the Honorable James Alger Fee and the Honorable Claude McColloch, Judges of said Court, and the seal thereof, hereto affixed, at Portland, in said District, on the 1st day of May, A. D. 41.

[Seal] G. H. MARSH,
Clerk.

By F. L. BUCK,
Chief Deputy Clerk. [13]

United States of America,
District of Oregon—ss.

I hereby certify and return, That on the 1st day of May 1941 I received the within Monition & Libel, And that I served the same on the 2nd day of May

1941 at 11:10 A. M. on F. N. Mills, Atty. in Fact for said American-Hawaiian Steamship Co., etc., at his office in the Railway Exchange Bldg. 320 SW, Stark St., Portland, Ore., by delivering a copy thereof together with a copy of the Libel in the within entitled cause to the therein named F. N. Mills, Atty. in fact for said Co. personally. Dated at Portland, Oregon, this 2nd day of May, 1941.

J. T. SUMMERVILLE,

United States Marshal.

By W. H. RICKARD,

Deputy U. S. Marshal.

[Endorsed]: Filed May 2, 1941.

And Afterwards, to wit, on the 1st day of May, 1941, there was issued out of said Court, a Warrant of Arrest and Monition in rem, in words and figures, as follows, to wit: [14]

District Court of the United States

For the District of Oregon

WARRANT OF ARREST AND MONITION

The President of the United States of America
to the Marshal of the District of Oregon, or
his Deputy, Greeting:

You Are Hereby Strictly Enjoined and Com-
manded that you arrest the vessel called the SS
"Pennsylvanian" whereof now is, or lately was,
master, her tackle, apparel, and furniture, engines,

boilers, and equipment if she shall be found within your district; and the same so arrested you keep under safe and secure arrest until you shall receive further orders from the Court, or the same shall be discharged in due course of law; and that you cite at the premises all persons in general who have, or pretend to have, any right, title, or interest therein, to appear before the Judge of the District Court of the United States, for the District of Oregon, at the City of Portland, on the 2nd day of June A. D. 41, if it be a court day, or else on the court day next following, at ten o'clock in the forenoon of such day, then and there to answer unto Western Transportation Co., a corporation, in the cause of tort, civil and maritime, and further to do and to receive in this behalf as to justice shall appertain; and that you duly certify the Court aforesaid what you shall do in the premises, together with these presents.

Witness the Honorable James Alger Fee and the Honorable Claude McColloch, Judges of said Court, and the seal thereof hereto affixed at Portland in said District on the 1st day of May, A. D. 41.

[Seal]

G. H. MARSH,

Clerk.

By F. L. BUCK,

Chief Deputy Clerk. [15]

And Afterwards, to wit, on the 1st day of May, 1941, there was duly Filed in said Court, a Claim of Owner of the "Pennsylvanian" in words and figures as follows, to wit: [16]

[Title of District Court and Cause.]

CLAIM OF OWNER

American-Hawaiian Steamship Company, owner of the above named SS. Pennsylvanian, appears before this Court, by F. N. Mills, its Agent, who claims the said ship and prays to defend this suit accordingly.

ERSKINE WOOD

ERSKINE B. WOOD

Proctors for Claimant.

District of Oregon—ss.

F. N. Mills, being duly sworn, says that American-Hawaiian Steamship Company is the true owner of the said ship Pennsylvanian. and that no other person is the owner thereof, and that deponent is agent of the owner and authorized to put in this claim, and deponent further says that at the time of the commencement of this suit said ship Pennsylvanian was in the possession of said owner.

F. N. MILLS

Subscribed and sworn to before me this 1st day of May, 1941.

[Seal]

M. MUIR

Notary Public for Oregon.

My commission expires July 12, 1943.

[Endorsed]: Filed May, 1941. [17]

And Afterwards, to wit, on the 1st day of May, 1941, there was duly Filed in said Court, Claimant's Stipulation to Abide by and Pay Decree, in words and figures as follows, to wit: [18]

[Title of District Court and Cause.]

STIPULATION

Whereas a libel was filed in this Court on May 1, 1941, by Western Transportation Co. against the SS. Pennsylvanian, etc., for the reasons and causes in said libel mentioned, and whereas a claim to said steamship has been filed by American-Hawaiian Steamship Company, and the said claimant and Fireman's Fund Indemnity Company, a California corporation, its surety, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant, execution may issue against their goods, chattels and lands for the sum of Thirty Thousand Dollars (\$30,000.):

Now, Therefore, It Is Hereby Stipulated and Agreed, for the benefit of whom it may concern, that the stipulators undersigned are bound in the sum of Thirty Thousand Dollars (\$30,000.00), conditioned that the claimant above named shall abide by and pay the money, including costs and disbursements, awarded by the final decree rendered in this cause by this Court, or in case of appeal by the Appellate Court.

Dated May 1, 1941.

AMERICAN-HAWAIIAN
STEAMSHIP COMPANY

By F. N. MILLS

District Manager
FIREMAN'S FUND
INDEMNITY COMPANY

[Seal] By E. A. VALENTINE
Attorney-in-Fact

Approved as to form and amount.

CLARENCE J. YOUNG
of Proctors for Libelant.

[Endorsed]: Filed May 1, 1941. [19]

And Afterwards, to wit, on the 10th day of June, 1941, there was duly Filed in said Court, an Answer and Cross Libel of Claimant and Respondent, in words and figures as follows, to wit: [20]

In the District Court of the United States
For the District of Oregon

No. Civ. 727

WESTERN TRANSPORTATION CO., a corporation,

Libelant,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, and the SS. "PENNSYLVANIAN", her engines, boilers, etc.,
Respondents.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,
Claimant.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,
Cross-Libelant,

vs.

WESTERN TRANSPORTATION CO., a corporation, and the Steamboat "BARRY K", Etc., and Barges 22 and 24,
Cross Respondents.

ANSWER AND CROSS-LIBEL OF AMERICAN-HAWAIIAN STEAMSHIP COMPANY,
CLAIMANT, AND CROSS-LIBELANT

To the Honorable James Alger Fee and the Honorable Claude McColloch, Judges of the above entitled Court:

The answer of American-Hawaiian Steamship Company, as claimant of the SS. Pennsylvanian, and also as respondent in personam, to the libel of Western Transportation Company, says:

Article I.

The claimant and respondent admits the allegations of Article I.

Article II.

The claimant and respondent admits the allegations of Article II. [21]

Article III.

The claimant and respondent admits that, at the time the libel was filed and process issued, the Pennsylvanian was at Astoria in the jurisdiction of this Court.

Article IV.

The claimant and respondent admits that on February 1, 1941, the Barry K and Barges 22 and 24 were being navigated in a southerly direction up stream en route from Camas to Portland, and that the barges were loaded with paper, and that the night was dark, but denies that it was clear, and

alleges that it was overcast, but with visibility good; denies knowledge of the speed of the Barry K, and denies that the Barry K and her tow were made up, as alleged, with the Barge 22 on the port bow, and alleges that Barge 22 was lashed ahead of the Barry K's bow, resting on her stem, and that Barge 24 was lashed alongside on the port side. Denies that any easterly breeze was blowing, except so slight as to be negligible, and alleges that the night was calm. (Throughout this answer claimant and respondent refers to the Barry K's tow as "barges", since libelant has so denominated them, but reserves the right to assert that they are "scows" if the evidence so justifies, and their character becomes material.)

Article V.

Denies that the Barry K was equipped with proper or lawful lights for navigation, and in this respect alleges that the white light on her stem was either extinguished or obscured, and that the barges were not lighted as required by the regulations. Denies knowledge or information sufficient to form a belief whether she was equipped with a proper or lawful whistle, or whether her pilot was competent or whether he was acting both as lookout and helmsman, or whether the crew were performing their duties. Denies specifically that the Barry K at all or any times was properly or lawfully [22] proceeding on her course up stream, and alleges that she was proceeding up stream on her own left-

hand side of a narrow channel, as understood in law, in violation of Article 25 of the Inland Rules, when it was both practicable and safe for her to have kept to the right-hand side as required.

Article VI.

Claimant and respondent denies the allegations of Article VI and each of them, except it admits that the Barry K and tow were proceeding up the east side of the river, and alleges that such procedure was in violation of law.

Article VII.

Claimant and respondent denies knowledge or information sufficient to form a belief of the allegations of Article VII, but admits that about the time alleged the Pennsylvanian was coming down the Willamette River toward Post Office Bar, having passed under the St. Johns bridge at 12:39 A. M.

Article VIII.

Denies the allegations of Article VIII and each of them, except as they may be hereinafter admitted in the affirmative allegations of the cross-libel following this answer.

Article IX.

Denies the allegations of Article IX and each of them, except as they may be hereinafter admitted in the affirmative allegations of the cross-libel following this answer. [23]

Article X.

Claimant and respondent denies the allegations of Article X and each of them; and alleges that the collision was entirely due to the fault of the Barry K and its navigating officers, as hereinafter alleged in the cross-libel following this answer.

Article XI.

Denies knowledge or information sufficient to form a belief of the allegations of Article XI, and calls for proof of the same.

Article XII.

Claimant and respondent denies that all or singular the premises are true, but admits the jurisdiction of the Court.

CROSS-LIBEL

This cross-libel of American-Hawaiian Steamship Company, a corporation, against Western Transportation Co. and the river steamboat Barry K, her engines, boilers, tackle, apparel and furniture, and Barges 22 and 24, in a cause of collision, civil and maritime, alleges as follows: (Throughout this cross-libel cross-libelant refers to the Barry K's tow as "barges", since libelant has so denominated them, but reserves the right to assert that they are "scows" if the evidence so justifies, and that character becomes material.)

Article I.

The cross-libelant is a corporation organized and

existing under the laws of the State of New Jersey and is, and at all times herein mentioned was, the owner of the American Steamship *Pennsylvanian*, against which the original libel in this cause was filed. [24]

Article II.

The Western Transportation Co. is a corporation organized and existing under the laws of the State of Oregon, and is, and at all times hereinafter mentioned was, the owner of the river steamboat *Barry K* and of the said Barges 22 and 24.

Article III.

The said steamboat *Barry K* and the said Barges are, or at the time process herein is issued will be, in the District of Oregon, and within the jurisdiction of this Court.

Article IV.

At about 12:55 A. M. on February 1, 1941, the said *Barry K* and her barges were in collision with the said *Pennsylvanian* in the Willamette River near what is known as Post Office Bar, and as a result of said collision the *Pennsylvanian* suffered the damage hereinafter alleged.

Article V.

The Willamette River at the place where the collision occurred, is a narrow channel, as that term is understood in the laws and statutes regulating navigation, and particularly Article 25 of the Inland Rules.

Article VI.

The Bureau of Marine Inspection and Navigation of the U. S. Department of Commerce has, previously to this collision, ruled that the river at this place is a narrow channel, as understood in said Article 25, and that a pilot of a tug and tow was negligent in attempting to come up stream at this place on the left-hand side, and all pilots were and are bound to take cognizance of that ruling. [25]

Article VII.

The facts and circumstances of the collision between the *Pennsylvanian* and the *Barry K* and her barges were as follows:

1. The *Pennsylvanian*, under the command of her master, Captain Vaux, and with Pilot John Norberg, Willamette and Columbia River pilot, acting as pilot, left Pier A, Terminal No. 1, Portland, at 12:03 A. M., February 1, 1941, bound for Astoria. The weather was overcast, visibility good, calm and smooth, with a slight current in the river, to-wit, about half a knot, and at all times hereinafter narrated the said master, pilot, and the third mate were on the bridge. A helmsman was at the wheel, a lookout was stationed forward on the forecastle head, and the pilot was conning the ship. The vessel proceeded down river, passed through the railroad bridge at slow speed, and, passing under St. Johns bridge, put her engines at half speed at 12:39 A. M.

2. The *Pennsylvanian* proceeded down stream on the usual course of steamers on the Post Office Bar range, and shortly after leaving it, sighted the lights of a towboat approximately a mile or more down stream, which towboat later proved to be the *Barry K* with two barges in tow.

3. Shortly after the *Pennsylvanian* sighted the *Barry K*, the *Barry K* blew one blast of her whistle, indicating a passage port to port, in accordance with the regular rules of the road, and the *Pennsylvanian* answered this with one blast, and continued down stream on her own right-hand side of the channel. As the vessels continued to approach, the *Barry K* showed her green light and shut out the red, whereupon the *Pennsylvanian* slowed and stopped her engines. [26]

4. Shortly thereafter the *Barry K* sounded several short and rapid blasts understood by those on the *Pennsylvanian* to be a danger signal, and the *Pennsylvanian's* engines were put full astern, and the wheel hard right, and the *Pennsylvanian* sounded three short and rapid blasts to indicate that her own engines were going full astern, and soon after that, to-wit, at about 12:55 A. M., the *Pennsylvanian* collided with one of the *Barry K's* barges, namely, Barge 22, on the latter's starboard side.

5. At all times herein, the *Pennsylvanian* was keeping well to that side of the fairway or midchannel which lay on her own starboard

side, in accordance with Article 25 of the Inland Rules, and the Barry K, in violation of said article, failed to keep to her own right-hand side, and the collision occurred well toward the east side of the river in the Pennsylvania's water. The river here is at least 1100 feet wide, and the 30-foot channel is at least 800 feet wide. It was a calm night, with no appreciable wind or current, and it was entirely safe and practicable for the Barry K and her tow to proceed up stream on her own right-hand side, as Article 25 requires. The collision occurred entirely through the fault of the Barry K.

Article VIII.

The Barry K and her tows were being operated at the time of said collision by the respondent Western Transportation Co., and the said Barry K and her tows and said respondent were negligent in the particulars hereinafter alleged, one or all of which caused or contributed to said collision and to the damage sustained by the [27] Pennsylvanian:

1. The Barry K and her tows failed to keep to that side of the fairway or midchannel which lay on their own starboard side, when it was entirely safe and practicable for them to have done so, all in violation of said Article 25.

2. The Barry K and her tows persisted in said violation of Article 25 after it became clearly evident that the Pennsylvanian, in obedience to said Article 25, was keeping to

her own right-hand side, and was thus occupying the side of the river into which the Barry K and her tows were proceeding. The Barry K and her tows continued to proceed at full speed ahead without slowing or stopping her engines, and did not reverse them or take any effective steps to avoid the collision until too late to do so.

3. The Barry K was navigated by her pilot alone, and her master was asleep, and was not called to the pilot house until too late to take any steps to avoid the collision.

4. The front range light of the Barry K was either obscured or not burning.

5. The barges were not lighted in accordance with the regulations of the Bureau of Marine Inspection and Navigation in this, namely, the only lights on them, on information and belief based upon the testimony of the Barry K's pilot given at the investigation before the said Bureau of Marine Inspection and Navigation, were a kerosene lantern on the forward starboard corner of Barge 22, another on the forward port corner of Barge 24, and one on the after port corner of said Barge 24, but none of these lanterns shone all around the horizon, since they were partly obscured by the deckhouses of the barges, and none of them had the visibility [28] required by the regulations.

6. The Barry K, on information and belief based upon the testimony of her own pilot given

before the said Bureau, after she had received one blast from the *Pennsylvanian*, twice blew two blasts, and proceeded on the wrong side of the channel, and did not slow or stop her engines until after the second of the said two blasts, and did not reverse until after the *Pennsylvanian* herself reversed and had given the signal therefor.

The *Barry K* was negligent in other particulars which, if the evidence justifies at the trial, this cross-libelant will ask leave to amend its cross-libel and allege, so as to conform to such evidence.

Article IX.

In said collision, the *Pennsylvanian* suffered damages necessitating drydocking and repairs and causing the ship to be detained and to lose time while said repairs were made, and as a result thereof, this cross-libelant, *American-Hawaiian Steamship Company*, has been, and is, damaged in the sum of \$35,000.00, as nearly as can now be estimated, with interest, all because of the negligence of the *Barry K* and tow, and their owner, as hereinbefore alleged.

Article X.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this Court.

Wherefore, *American-Hawaiian Steamship Co.*, as claimant of the *Pennsylvanian* and as respondent to the libel of *Western Transportation Co.*, prays

that said libel be dismissed; and, [29] as cross-libelant, prays that process in due form of law may issue against the said Barry K, etc., and her said two barges, and that all persons claiming any right, title or interest in them be cited to appear and answer on oath all and singular the matters aforesaid, and that said steamboat and barges be condemned and sold to pay the demands and claims aforesaid, with interest and costs; and that process may issue against the Western Transportation Co. in personam, citing it to appear and answer on oath the matters and things alleged in this cross-libel; and that this cross libelant may have and recover from said Western Transportation Co. the amount of its said damages, with interest and costs; and that proceedings on the libel be stayed until adequate security, in the form of an admiralty stipulation in the sum of \$40,000.00, be filed by the libelant to abide by and pay any decree that may be entered on the cross-libel; and this cross-libelant prays for such other, further and different relief as to this Honorable Court may seem just and in accordance with the Admiralty practice.

ERSKINE WOOD

ERSKINE B. WOOD

Proctors for American - Hawaiian Steamship Company,
Claimant of the Pennsylvanian, and Respondent to the
original Libel, and Cross-Libelant.

District of Oregon—ss.

I, F. N. Mills, first being duly sworn, say that I am District Manager of American-Hawaiian Steamship Company, respondent, claimant, and cross-libelant in the above entitled cause; that I am familiar with the contents of the within answer and cross-libel; and state, that, on my information and belief, the allegations therein contained are true.

F. N. MILLS

Subscribed and sworn to before me this 9th day of June, 1941.

[Seal]

JOHN P. LIPSCOMB, JR.

Notary Public for Oregon

My commission expires Oct. 13, 1944. [30]

Service of the within Answer and Cross-Libel, by certified copy, at Portland, Oregon, this 10th day of June, 1941, is hereby admitted.

CLARENCE J. YOUNG,

Of Prectors for Libelant.

[Endorsed]: Filed June 10, 1941. [31]

And Afterwards, to wit, on the 12th day of June, 1941, there was duly Filed in said Court, a Notice by cross libelant of application for an order for respondent in cross-libel to give bond to abide by and pay decree, in words and figures as follows, to it: [32]

In the District Court of the United States
for the District of Oregon

No. Civ. 727

The "PENNSYLVANIAN" and the
"BARRY K".

NOTICE

To Mr. Clarence J. Young, Proctor for Libelant.

Dear Sir:

At the coming in of Court on next Thursday morning, June 12th, or as soon thereafter as proctors can be heard, we shall apply for an order, copy of which is attached.

Very truly yours,

ERSKINE WOOD

ERSKINE B. WOOD

Proctors for American-
Hawaiian Steamship Com-
pany.

[Endorsed]: Filed June 12, 1941. [33]

And Afterwards, to wit, on Thursday, the 12th day of June, 1941, the same being the 87th Judicial day of the Regular March, 1941, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [34]

[Title of District Court and Cause.]

ORDER RE BOND

On application of the cross-libelant, American-Hawaiian Steamship Company, appearing by its proctor, Erskine Wood,

It Is Ordered that the libelant, Western Transportation Co., file in this court within ten days an admiralty stipulation in the sum of \$35,000 to abide by and pay the decree that may be entered on the cross-libel, and that pending the filing of such stipulation, all proceedings on the libel be stayed.

Dated this 12th day of June, 1941.

JAMES ALGER FEE

Judge.

[Endorsed]: Filed June 12, 1941. [35]

And Afterwards, to wit, on the 12th day of June, 1941, there was duly Filed in said Court, stipulation by claimant in Cross-Libel to abide by and pay decree, in words and figures as follows, to wit: [36]

In the District Court of the United States
for the District of Oregon
No. Civ. 727

WESTERN TRANSPORTATION CO., a corporation,

Libelant,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, and the SS. "PENNSYLVANIAN", her engines, boilers, etc.,

Respondents.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,

Claimant.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,

Cross-Libelant,

vs.

WESTERN TRANSPORTATION CO., a corporation, and the Steamboat "BARRY K", Etc., and Barges 22 and 24,

Cross Respondents.

STIPULATION

Whereas, on June 10th, said American-Hawaiian Steamship Company, claimant and respondent, as cross-libelant, filed a cross libel against the Str.

“Barry K”, etc., for the reasons and causes in said cross libel mentioned; and whereas a claim to said steamboat has been filed by Western Transportation Company, claimant, libelant and cross respondent, and the said claimant, Western Transportation Company and American Bonding Company, its surety, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant, Western Transportation Company, execution may issue against their goods, chattels and lands for the sum of Thirty-five Thousand Dollars (\$35,000.00).

Now, Therefore, It Is Hereby Stipulated and Agreed for the benefit of whom it may concern that the stipulators undersigned are bound in the sum of Thirty-five Thousand Dollars (\$35,000.00) conditioned that the claimant, Western Transportation Company shall abide by and pay the money, including costs and disbursements awarded in the final decree rendered in this cause by this Court, or in case of appeal by the Appellate Court.

Dated at Portland, Oregon, the 18th day of June, 1941.

[Seal]

WESTERN TRANSPORTA-
TION COMPANY

By R. L. WEST

Secretary-Treas.

[Seal]

AMERICAN BONDING COM-
PANY

By JACK GODFREY

Attorney in Fact

[Endorsed]: Filed June 19, 1941. [37]

And Afterwards, to wit, on the 12th day of July, 1941, there was duly Filed in said Court, an Answer to Cross-Libel, in words and figures as follows, to wit: [38]

[Title of District Court and Cause.]

ANSWER TO CROSS-LIBEL

The answer of Western Transportation Company, a corporation, as claimant of the Steamboat "Barry K," her engines, etc., and Barges 22 and 24, and as respondent in personam to the cross-libel of Western Transportation Company, says:

Article I.

Admits the allegations of Article I.

Article II.

Admits the allegations of Article II.

Article III.

Admits the allegations to Article III. [39]

Article IV.

Denies the allegations of Article IV, and each of them, except claimant and respondent to the cross-libel admits that at about 12:55 A.M. on February 1, 1941, the said Barry K and her barges were in collision with the said Pennsylvanian in the Willamette River, near what is known as Postoffice Bar.

Article V.

Admits the allegations of Article V.

Article VI.

Denies the allegations of Article VI and each of them.

Article VII.

Claimant and respondent to the cross-libel denies the allegations of Article VII, and each of them, except as the same conform to the allegations of Articles IV to X, both inclusive, of this claimant and respondent's original libel on file herein against said cross libelant and said SS Pennsylvanian, her engines, etc., which said articles are by this reference made a part hereof.

Article VIII.

Denies the allegations of Article VIII, and each of them.

Article IX.

Denies the allegations of Article IX, and each of them, except claimant and respondent to the cross-libel admits that the Pennsylvanian suffered some damages in said collision, necessitating dry-docking and repairs and causing said ship to be detained and to lose some time while said repairs were made.

Article X.

Denies the allegations of Article X, and each of them, except respondent and claimant to the cross-libel admits that the matters referred to in said cross-libel are *with* the admiralty and maritime jurisdiction of this Court. [40]

Western Transportation Company, a corporation,

as claimant to the SS Barry K, her engines, etc., and Barges 22 and 24, and as respondent to the cross-libel of American-Hawaiian Steamship Company for an affirmative defense to said cross-libel says:

Article I.

Refers to and by this reference re-alleges the allegations of each and every article of its original libel herein, except Article XI thereof, against cross-libelant American-Hawaiian Steamship Company, a corporation, and the SS Pennsylvanian, her engines, etc., and makes the same a part hereof.

Article II.

Negligence of the said American-Hawaiian Steamship Company as hereinbefore set out was the sole and proximate cause of said collision and the damages resulting therefrom.

Wherefore, having fully answered the cross-libel of American-Hawaiian Steamship Company, respondent, claimant and cross-libelant, Western Transportation Company, libelant and claimant and respondent to the cross-libel prays that said cross-libel be dismissed and for such other and further relief as is prayed for in its original libel herein.

DEY, HAMPSON & NELSON

CLARENCE J. YOUNG

R. B. MAXWELL

Proctors for Western Transportation Company, libelant, claimant and respondent to cross-libel.

United States of America,
District of Oregon—ss.

I, Robert West, first being duly sworn, say that I am Secretary-Treasurer of Western Transportation Company, libelant, claimant and respondent to cross-libel in the above entitled cause; that I am familiar with the contents of the within answer to cross-libel; and state, that, on my information and belief, the allegations therein contained are true.

ROBERT WEST

Subscribed and sworn to before me this 12th day of July, 1941.

[Seal]

CLARENCE J. YOUNG

Notary Public for Oregon.

My Commission Expires Mar. 18, 1944. [41]

State of Oregon,
County of Multnomah—ss.

Service of the foregoing Answer to Cross-Libel by copy, as prescribed is hereby admitted at Portland, Oregon, this 12 day of July, 1941.

ERSKINE WOOD

Of Proctors for Respondents,
Claimant and Cross Libel-
ant.

[Endorsed]: Filed July 12, 1941. [42]

And Afterwards, to wit, on the 10th day of October, 1941, there was duly Filed in said Court, an Opinion, in words and figures as follows, to wit: [43]

In the District Court of the United States
for the District of Oregon
Civ. No. 727

WESTERN TRANSPORTATION CO.,
a corporation,

Libelant,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COM-
PANY, a corporation, and THE SS. "PENN-
SLYVANIA", her engines, boiler, etc.
Respondents.

MEMORANDUM OF DECISION

In the view that I take of the case, decision of a number of questions presented at the trial becomes unnecessary. My view is that both vessels were negligent in failing to stop their engines at the time the "*Bary K*" blew the first danger signal. The pilot of the "*Pennsylvanian*" claimed in his corrected testimony that he ordered full astern on hearing the first danger signal, but the circumstances of the case persuade me that he did not take this action at the time stated. Had either or both pilots stopped engines when it became apparent that a dangerous situation had arisen, it is unlikely that the vessels would have come together. This view makes the case one for divided damages.

Dated October 10, 1941.

CLAUDE McCOLLOCH
Judge

[Endorsed]: Filed October 10, 1941. [44]

And Afterwards, to wit, on the 2nd day of December, 1941, there was duly lodged in the Clerk's Office for the Court by Libelant, proposed Findings of Fact and Conclusions of Law, in words and figures as follows, to wit: [45]

In the District Court of the United States
for the District of Oregon

No. Civ. 727

WESTERN TRANSPORTATION CO.,
a corporation,

Libelant,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COM-
PANY, a corporation, and the S.S. "PENN-
SYLVANIAN", her engines, boilers, etc.,
Respondents.

AMERICAN-HAWAIIAN STEAMSHIP COM-
PANY, a corporation,

Claimant.

AMERICAN-HAWAIIAN STEAMSHIP COM-
PANY, a corporation,

Cross Libelant,

vs.

WESTERN TRANSPORTATION CO., a cor-
poration, and the Steamboat "BARRY K",
etc., and Barges 22 and 24,

Cross Respondents.

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause came on regularly for trial commencing on July 15, 1941, and continuing from day to day, Sundays excepted, to and including the 24th day of July, 1941. Libelant and cross-respondent, Western Transportation Company appeared by Clarence J. Young and Richard B. Maxwell, its proctors, of the firm of Dey, Hampson & Nelson, and claimant and cross-libelant, American-Hawaiian Steamship Company appeared by Erskine Wood and Erskine B. Wood, its proctors. On the basis of the pleadings and the evidence introduced during the course of the trial I find the facts to be as follows: [46]

FINDINGS OF FACT

I.

Libelant and cross-respondent, Western Transportation Company, is now and had been since prior to February 1, 1941, a corporation duly organized and existing under and by virtue of laws of the State of Oregon. Said company was on February 1, 1941, the owner and operator of the stern wheel steam river tug "Barry K" and of two light draft lighters (commonly called throughout the case barges) bearing numbers 22 and 24 respectively.

II.

American-Hawaiian Steamship Company, claimant and cross-libelant, now is and was on and prior to February 1, 1941, a corporation organized and

existing under and by virtue of laws of the State of New Jersey, and authorized to do and doing business in the State of Oregon, and having an office for the transaction of such business at Portland, Oregon. Said company now is and was on February 1, 1941, the owner and operator of the S.S. "Pennsylvanian", an ocean-going steamer.

III.

The S.S. "Pennsylvanian" and her owners are liable for the total damage to the cargo of the tows of the "Barry K".

IV.

At 1:56 A.M. on the morning of February 1, 1941, a collision occurred in the Willamette River at a point known as Postoffice Bar between the S. S. "Pennsylvanian" and the steam river tug boat "Barry K." Said river is a navigable stream and a part of the navigable waters of the United States. Said river at said place is a narrow channel within the meaning of the laws and statutes regulating navigation. [47]

Just prior to said collision the said "Barry K" was being navigated at a speed of about six miles per hour in a southerly direction upstream on the Willamette River. Said "Barry K" was then with tow of said lighters No. 22 and 24 each loaded with paper, lighter 22 being made up on the port bow of the "Barry K" and lighter No. 23 being laid out on the port side thereof. Said "Barry K" was enroute from Camas, Washington, to Portland, Oregon.

VI.

The night was dark but clear and an easterly breeze of about fourteen miles an hour was blowing. The "Barry K" and her tows were equipped with proper and lawful lights for navigation at night upon said river, which lights were burning brightly; its forward range light, however, was not lighted because the lighter on "Barry K's" bow obstructed the view of such light and would have blinded the pilot by reflecting such light. She was equipped with a proper and lawful whistle capable of being heard at a distance in excess of two miles under the conditions then existing. A competent pilot, and licensed master, Captain Reed, was maintaining a lookout at the wheel of the "Barry K". He and other members of the crew on watch were faithfully attending to their duties.

VII.

The Willamette River flows in a general northerly direction from Portland, Oregon, to its junction with the Columbia River, approximately twelve miles north of Portland. At Postoffice Bar there is a sharp bend in the Willamette River, as a result of which the current is deflected so that the natural channel of the river lies along the west bank. The west bank of the river at this point is protected from washing by a dike constructed of piling of uneven height. The east side of the river is shoal water overlying Postoffice Bar. The dredged ship channel, 35 feet in depth, has a width of about 600 feet, and lies toward the westerly portion [48] of

the river. Between the easterly edge of said ships' channel and the east bank of the river, there is approximately 400 feet of water available to river boats but not safe for use by ocean-going vessels. The sand bank on the east side of the river is covered with willows and cottonwoods which afford protection against prevailing easterly winds.

VIII.

The "Barry K" is a stern wheel river boat 190 feet in length with her pilothouse extending 34 feet above the water. The lighters which she had in tow are each approximately 135 feet long by 35 feet beam with their deck houses extending about 20 feet above the water. The "Barry K" drew 2 feet 8 inches and her tows not more than five feet. River boats such as the "Barry K" being of light draft and standing high out of the water are exposed to the wind and are peculiarly subject to slippage when making an outside turn. They are likewise peculiarly affected by currents and wind and by the displacement swell and "kick" water from the propellers of other vessels. River boats with tows are usually required to stop on meeting large ships to prevent breakage of lines and damage, and while so stopped are at the mercy of wind and current and the propulsive force of swells and of "kick" water.

IX.

On said date and for more than forty years prior thereto, it had been and was unsafe and imprac-

licable for river tugs such as the "Barry K" with barges in tow to proceed upstream on the west side of said river at Postoffice Bar. By reason of this fact, it was the universal practice of river boats with barges to proceed up said river at said place upon the easterly side thereof. This custom was known to all Willamette River pilots. The "Barry K" was lawfully proceeding up the easterly side of the river at this point. [49]

X.

The S. S. "Pennsylvanian" under the command of her master, Captain Vaux, and with Pilot John Norberg acting as pilot, left terminal Number 1 in Portland at 12:03 A.M., February 1, 1941, bound for Astoria. At and prior to said collision, her master pilot and third mate were on the bridge, a helmsman was at the wheel, and a lookout was stationed forward on the forecastle head. There was no officer or member of the crew of the S. S. "Pennsylvanian" stationed on the forecastle head in charge of the anchors or capable of dropping the same. The "Pennsylvanian" was proceeding with her engines at full speed ahead, and at a speed of about 8 miles an hour over the ground as she left Postoffice range and sighted the river boat "Barry K". The "Pennsylvanian" was sighted by the pilot of the river boat "Barry K" at approximately the same time and when the vessels were about one mile apart.

XI.

When the two vessels were about 3,000 or 4,000 feet apart, the "Barry K" gave two short blasts of her whistles for a starboard passage. This signal was answered by the "Pennsylvanian" with one blast of its whistle. When the two vessels were about 2500 or 3,000 feet apart, the "Barry K" sounded four short blasts of its whistle as a danger signal. No response by whistle was made by the "Pennsylvanian." When the vessels were between 2,000 and 2,500 feet apart, the "Barry K" again sounded two short blasts of its whistle and again no answer was made by the "Pennsylvanian". When the two vessels were about 2,000 feet apart, the "Barry K" again sounded four blasts of its whistle and again no answer was given by the "Pennsylvanian". When the two vessels were about 1500 feet apart the "Barry K" again sounded two short blasts of her whistle. When the vessels were about 1,000 feet apart, the "Pennsylvanian" sounded three short blasts of her whistle to [50] indicate that her engines were full speed astern. The "Barry K" sounded three blasts of her whistle to indicate her engines were full speed astern when the two vessels were about 500 feet apart.

XII.

Throughout the entire period after the vessels sighted each other, and after the first whistle signals were blown by the "Barry K", the "Barry K" was swinging to its port, that is, toward the east side of the river, for the purpose of getting

into shallow water next to the bank where she and her tows could proceed out of the path of the approaching steamer. During said entire period the "Pennsylvanian" was swinging to her starboard, that is, to the east side of the river, and directly into the course of the "Barry K". The engines of the "Pennsylvanian" were reversed when the vessels were about 1,000 feet and those of the "Barry K" were reversed when the vessels were about 500 feet apart. The vessels collided off Postoffice Bar at a point about 200 feet east of the easterly edge of the main ships' channel. The main ships' channel with a dredged depth of 35 feet and a width of approximately 600 feet was entirely open and free from other river traffic, and was available for use by the S. S. "Pennsylvanian."

XIII.

Those in charge of the navigation of the S. S. "Pennsylvanian" were negligent and at fault in the following particulars:

1. In failing to give proper or any heed to the several whistle signals by the "Barry K" for a starboard passage.
2. In failing to give proper or any heed to the danger signals given by the "Barry K".
3. In crossing the starboard passing signal of the "Barry K" with a port passing signal.
4. In failing to ascertain the position of the "Barry K" and take steps to avoid the collision.

5. In failing to change her course to port but continuing to starboard.

6. In failing to reverse her engines at the first danger signal from the "Barry K".

7. In proceeding at an immoderate rate of speed.

8. In failing to use the open and available main ships' channel.

9. In failing to have available a competent person to drop the anchors.

10. In failing to drop the anchors.

XIV.

Captain John Norberg, pilot of the S. S. "Pennsylvanian" was familiar with the universal practice of river boats to proceed upstream at Post-office Bar on the easterly side of the river.

XV.

The foregoing acts of negligence and fault on the part of those in charge of the S. S. "Pennsylvanian" directly and proximately contributed to said collision.

XVI.

Those in charge of the navigation of the "Barry K" were negligent only in proceeding toward the shallow water on the east side of the river after the "Barry K" blew the first danger signal instead of stopping its engines. This negligence proximately contributed to the collision. Those in charge of the "Barry K" were not negligent in any other respect.

XVII.

The tows of the "Barry K" were loaded with paper which was the property of Crown Willamette Company. Said cargo and its owner were free from fault in connection with said collision.

CONCLUSIONS OF LAW

I.

The "Barry K" was properly handled and navigated prior to and at the time of the collision except for its continuing toward the east bank after blowing its first danger signal, but its action [52] in this regard makes it partially responsible for said collision and its owners are therefore liable to pay one-half of the total damage resulting from said collision.

II.

The "Pennsylvanian" was improperly and negligently handled and navigated prior to and at the time of said collision and her owners are liable for one-half of the total damage resulting from said collision.

At the trial the parties stipulated that they would submit to the court only the question of liability and after a decision on that point they would attempt to agree, if possible, on the amount of damages to be awarded, and, if damages could not be agreed upon, that the matter would be submitted to the court under Rule 43 or in such other manner as the Court might determine.

In accordance with this stipulation, the parties are given until within which to agree

upon the damages resulting from said collision, and if a figure cannot be agreed upon by that time, the proctors for the respective parties shall report said fact to the court and determination will then be made by the court as to how the damages shall be ascertained.

Proctors for libelant and cross-respondent may submit a form of interlocutory decree.

Dated at Portland, Oregon, this ... day of December, 1941.

.....

District Judge

[Endorsed]: Lodged in Clerk's Office, December 2, 1942. [53]

And Afterwards, to wit, on the 3rd day of December, 1941, there was duly Filed in said Court, Exceptions by Respondent to proposed Findings of Fact and Conclusions of Law lodged by Libelant, in words and figures as follows, to wit: [54]

[Title of District Court and Cause.]

EXCEPTIONS OF AMERICAN-HAWAIIAN
STEAMSHIP COMPANY TO THE FIND-
INGS OF FACT AND CONCLUSIONS OF
LAW PROPOSED BY PROCTORS FOR
THE WESTERN TRANSPORTATION CO.
AND THE "BARRY K", ETC.

American-Hawaiian Steamship Company, by its
proctors Erskine Wood and Erskine B. Wood, ex-

cepts to the said proposed Findings of Fact and Conclusions of Law on the ground that they go far beyond the Court's written Opinion, and far beyond the Court's own proposed Findings, and attempt to make findings (all in the interest of the "Barry K") on issues upon which the Court has declared it was unnecessary to pass. This exceptor submits that in preparing findings the proctors act merely as clerks for the Judge, and should submit findings only in accordance with the opinion handed [55] down, and not go beyond said opinion. If the Findings proposed by the "Barry K's" proctor are to be considered at all, it really would amount to trying the case all over again and arguing each issue.

The proposed Findings practically follow the pleadings of the "Barry K" and the theory of the "Barry K" upon every issue presented at the trial, and ignore entirely and contrary contentions of the "Pennsylvanian". This exceptor submits that these proposed Findings should be entirely disregarded as an attempt by proctor to foist upon the Court his own notion of the case, contrary to the Court's specific declaration that it was unnecessary to make findings on these issues, since the Court's decision was controlled by other facts which the Court itself has found.

If specific exceptions should be required for each proposed Finding, proctors for the American-Hawaiian Steamship Company will be glad to prepare and submit them, upon request of the Court,

but it is believed that the present general exceptions are sufficient.

ERSKINE WOOD

ERSKINE B. WOOD

[Endorsed]: Filed December 3, 1942. [56]

And Afterwards, to wit, on the 1st day of June, 1942, there was duly Filed in said Court, a stipulation as to damages, in words and figures as follows, to wit: [57]

[Title of District Court and Cause.]

STIPULATION RE DAMAGES

Whereas, the above entitled cause heretofore came on for trial upon the issues respecting liability alone before the Honorable Claude McColloch, one of the judges of the above entitled court, at the conclusion whereof the cause was taken under advisement by the Court, and the Court thereafter rendered its memorandum of decision that the case was one for divided damages; and

Whereas, subsequent to said decision this cause was set for trial upon the issues of damages as to libellant and cross libellant, but said parties, being desirous that formal trial thereon be avoided, and agreement having been reached with respect to the damages sustained by said respective parties, now, therefore, [58]

It Is Stipulated:

1. The damages sustained by Western Transportation Co., libellant, on its own behalf, as owner

of the Steamer "Barry K" and Barges Nos. 22 and 24, and as bailee of the cargo laden thereon and on behalf of its underwriters, are agreed between the parties to be as follows:

Damage to Barge No. 22.....	\$12,160.70
Damage to "Barry K".....	419.19
Demurrage re Barge No. 22.....	450.00
Demurrage re "Barry K".....	625.00
Loss to cargo on Barges 22 and 24.....	10,903.32
Total.....	<hr/> \$24,558.21

2. The damages sustained by cross-libellant American-Hawaiian Steamship Company are agreed by the parties to be as follows:

Damages suffered by SS "Pennsylvanian".....	\$15,960.71
Demurrage re SS "Pennsylvanian".....	12,366.00
Total.....	<hr/> \$28,326.71

3. It is further agreed that the foregoing stipulation as to damages will make unnecessary trial of said cause upon the issues respecting damages and that the parties now request the Court to make its findings of fact and conclusions and enter final decree herein.

Dated at Portland, Oregon, this 29th day of May, 1942.

WESTERN TRANSPORTA-
TION CO.,

A corporation, Libellant.

By CLARENCE J. YOUNG,

Of Its Proctors.

AMERICAN-HAWAIIAN

STEAMSHIP COMPANY,

A corporation, Cross Libelant.

By ERSKINE WOOD,

Of Its Proctors.

[Endorsed]: Filed June 1, 1942. [59]

And Afterwards, to wit, on the 2nd day of June, 1942, there was duly Filed in said Court, Findings of Fact and Conclusions of Law, in words and figures as follows, to wit: [60]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF
LAW

This libel and cross-libel having been tried and argued, briefs submitted and considered and memorandum of decision rendered and filed, I make the following controlling

FINDINGS OF FACT

The "Barry K", a stern-wheeled river boat, with a tow of two barges, and the SS. "Pennsylvanian", an ocean-going steamer, collided in the Willamette River on February 1, 1941. The collision was the proximate result of negligent handling of both vessels in that they failed to stop engines when the "Barry K" blew the first danger signal.

It follows as a Conclusion of Law that the damages resulting from the collision should be divided.

Counsel are requested to prepare a form of Decree.

Dated at Portland, Oregon, this 2nd day of June, 1942.

CLYDE McCOLLOCH,
Judge.

[Endorsed]: Filed June 2, 1942. [61]

And Afterwards, to wit, on Tuesday, the 2nd day of June, 1942, the same being the 79th Judicial day of the Regular March, 1942, Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [62]

In the District Court of the United States
for the District of Oregon

Civ. No. 727

WESTERN TRANSPORTATION CO., a corporation,
ration,

Libellant,

vs.

AMERICAN HAWAIIAN STEAMSHIP COMPANY, a corporation, and THE SS. "PENNSYLVANIAN", her engines, boilers, etc.,
Respondents.

FINAL DECREE

This cause having been tried and argued, and the Court having rendered and filed a memorandum

decision, and having made and filed findings of fact, and having concluded therefrom that the damages resulting from the collision should be divided;

It Is Now Considered, Ordered and Decreed that the damages resulting from the collision be divided equally between the "Pennsylvanian" and the "Barry K".

Dated this 2nd day of June, 1942.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed June 2, 1942. [63]

And Afterwards, to wit, on Thursday, the 20th day of August, 1942, the same being the 40th Judicial day of the Regular July Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [64]

In the District Court of the United States
for the District of Oregon

No. Civ. 727

WESTERN TRANSPORTATION CO., a corporation,

Libelant,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, and the SS. "PENNSYLVANIAN", her engines, boilers, etc.,

Respondents.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,

Claimant.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,

Cross Libelant,

vs.

WESTERN TRANSPORTATION CO., a corporation, and the Steamboat "BARRY K", etc., and Barges 22 and 24,

Cross Respondents.

FINAL DECREE

This cause having been tried and argued and the Court having rendered and filed a memorandum decision and having made and filed Findings of Fact and Conclusions of Law, and having concluded that the collision herein involved was the proximate result of negligent handling of both vessels and without any fault on the part of the cargo on either of said vessels, and that damages resulting from the collision should be equally divided between the parties at fault, and the parties having filed a written stipulation in court agreeing that the damages sustained by Western Transportation Company, Libelant, on its own behalf as owner of the Steam River Tug "Barry K" and Barges Nos. 22 and 24, and on behalf of its underwriters, are \$13,654.89, and that the damages sustained by said Western Trans- [65] portation Company as bailee for the owners of the cargo laden on said Barges Nos. 22 and 24, and on behalf of the underwriters in respect to said cargo, are \$10,903.32, and that the damages sustained by Cross-Libelant American-Hawaiian Steamship Company are \$28,326.71;

And the Court having on June 2, 1942, entered an interlocutory decree, mistakenly denominated "Final", which decreed that the damages should be equally divided but did not fix the amount of said damages and did not provide for the recovery thereof by either party against the other, nor make provision for costs or interest, and it is now necessary to enter a final decree;

It Is Now Considered, Ordered and Decreed that Western Transportation Company, as bailee for the owners of the cargo laden on said Barges Nos. 22 and 24 and on behalf of the underwriters in respect to said cargo, recover of and from American-Hawaiian Steamship Company and from its stipulator Firemen's Fund Indemnity Company, as the full loss to said cargo, the sum of \$10,903.32, with interest thereon at the rate of 6% per annum from the date of this decree until paid.

It Is Further Considered, Ordered and Decreed that the "Pennsylvanian" and the "Barry K" were equally at fault for the collision and that the damages thereto should be equally divided; that the damages of Libelant Western Transportation Company, on its own behalf as owner of the Steam Tug "Barry K" and Barges Nos. 22 and 24, and on behalf of its underwriters in respect thereto, are \$13,654.89; that the damages of Cross-Libelant American Hawaiian Steamship Company are \$28,326.71; that American-Hawaiian Steamship Company recover of and from Cross-Respondent Western Transportation Company and from its stipulator American Bonding Company one-half the difference of said damages with interest, said difference being \$14,671.82 and one-half thereof being \$7,335.91; that in addition and by way of recoupment, said American-Hawaiian Steamship Company recover the sum of \$5,451.66, being one-half the amount which said American-Hawaiian Steamship

Company and its stipulator are required herein to pay cargo on said Barges Nos. 22 and 24, making the total recoverable sum of \$12,787.57; [66] that said American-Hawaiian Steamship Company shall recover said last sum of \$12,787.57 of and from Cross-Libelant and its stipulator as aforesaid, with interest thereon at the rate of 6% per annum from the date of this decree until paid.

It Is Ordered and Decreed that each party bear its own costs.

It Is Further Ordered and Decreed that unless this decree be satisfied or an appeal taken therefrom by either party within ten days after service of a copy of this decree upon the opposing party or their respective proctors, the party in whose favor the decree runs may have execution against the opposing party and its stipulator to satisfy this decree.

Dated at Portland, Oregon, August 20th, 1942.

CLAUDE McCOLLOCH,

United States District Judge.

[Endorsed]: Filed August 20, 1942. [67]

And Afterwards, to wit, on the 27th day of August, 1942, there was duly Filed in said Court, a Notice of Appeal, in words and figures as follows, to wit: [68]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To George H. Marsh, Clerk and Clarence Young,
Proctor for Libellant and Cross Respondents.

Sirs:

Please take notice that American-Hawaiian Steamship Company, Respondent, Claimant and Cross Libellant in the above entitled cause hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this Court entered herein the 20th day of August, 1942, and from each and every part of said decree.

[69]

Dated August 27th, 1942.

Respectfully,

ERSKINE WOOD,

Proctor for American-Hawaiian Steamship Company, Respondent, Claimant and Cross Respondent, 1310 Yeon Building, Portland, Oregon.

Due and regular service of the foregoing Notice of Appeal is hereby accepted at Portland, Oregon, this 27th day of August, 1942.

CLARENCE J. YOUNG,

Proctor for Libellant and
Cross Respondents.

The within appeal is hereby allowed.

CLAUDE McCOLLOCH,

United States District Judge.

[Endorsed]: Filed August 27, 1942. [70]

And Afterwards, to wit, on the 27th day of August, 1942, there was duly Filed in said Court, a Petition for Appeal with order allowing appeal endorsed thereon, in words and figures as follows, to wit: [71]

[Title of District Court and Cause.]

PETITION FOR APPEAL AND ORDER
ALLOWING IT

American-Hawaiian Steamship Company, Respondent, Claimant and Cross Libelant, being aggrieved by the final decree, rulings and findings of the United States District Court in the above entitled cause, claims an appeal from said decree, rulings and findings, and prays that its said appeal may be allowed.

Dated this 27th day of August, 1942.

AMERICAN-HAWAIIAN

STEAMSHIP COMPANY,

Respondent, Claimant and
Cross Libelant.

By ERSKINE WOOD,

Its Proctor.

The foregoing petition and the appeal therein prayed for are hereby allowed.

CLAUDE McCOLLOCH,

United States District Judge.

Due and regular service of the foregoing Petition for Appeal and Order of Allowance are hereby

accepted at Portland, Oeragon, this 27th day of August, 1942.

CLARENCE J. YOUNG,
Proctor for Libelant and
Cross Respondents.

[Endorsed]: Filed August 27, 1942. [72]

And Afterwards, to wit, on the 27th day of August, 1942, there was duly Filed in said Court, an Assignment of Errors, in words and figures as follows, to wit: [73]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

The trial Court erred in the following particulars:

I.

In not holding that prior to and at the time of the collision the "Barry K" and her barges were being negligently navigated on the wrong (left-hand) side of a narrow channel (Willamette River), in violation of Article 25 of the Inland Rules, and that this was a proximate cause of the collision.

II.

In not holding that the "Barry K" and her barges were being negligently navigated at the time of the collision, in that the pilot was navigating the boat alone in the pilot house, with the master

asleep, and that this proximately contributed to the collision. [74]

III.

In not holding that the “*Pennsylvanian*” was carefully navigated throughout and was free from fault, and in not entering a decree in favor of American-Hawaiian Steamship Company accordingly.

IV.

In not holding that when the “*Barry K*” blew her first danger signal, the engines of the “*Pennsylvanian*” had already been stopped and were still stopped, and in not holding that they were reversed full speed astern at the time of said danger signal.

V.

In holding that “The collision was the proximate result of negligent handling of both vessels in that they failed to stop engines when the ‘*Barry K*’ blew the first danger signal.” (Findings of Fact).

VI.

In holding that the “*Pennsylvanian*” “failed to stop engines when the ‘*Barry K*’ blew the first danger signal”, and in not holding that they were already stopped, and were reversed, at that signal.

VII.

In holding that both vessels were to blame, and that it was a case for divided damages.

VIII.

In entering the final decree of August 20, 1942, holding both vessels to blame, and apportioning the damages on a basis of mutual fault.

Dated, August 27, 1942.

ERSKINE WOOD,

Proctor for American-Hawaiian Steamship Company, Respondent, Claimant, and Cross Libelant. [75]

Service of the within Assignment of Errors, by certified copy, at Portland, Oregon, this 27th day of August, 1942, is hereby admitted.

CLARENCE J. YOUNG,

Of Proctors for Libelant and
Cross-Respondent.

[Endorsed]: Filed August 27, 1942. [76]

And Afterwards, to wit, on the 27th day of August, 1942, there was duly Filed in said Court, a Bond for Costs on Appeal, in words and figures as follows, to wit: [77]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Present, That Fireman's Fund Indemnity Company, a California corporation, authorized to do a surety business in Oregon, is held and firmly bound unto Western Transportation Co. in the sum of Two Hundred Fifty

No/100ths Dollars (\$250.00) to be paid to said Western Transportation Co., its successors and assigns, for the payment of which well and truly to be made, the undersigned Fireman's Fund Indemnity Company binds itself, its successors and assigns, firmly by these presents.

The condition of this obligation is such that whereas American-Hawaiian Steamship Company has prosecuted, or is about to prosecute, an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a final decree entered in the above entitled Court and cause on the 20th of August, 1942:

Now, Therefore, if the above named appellant, American-Hawaiian Steamship Company, shall prosecute said appeal with [78] effect and pay all costs which may be awarded against it if the appeal is not sustained, then this obligation shall be void, otherwise the same shall remain in full force and effect.

[Seal] FIREMAN'S FUND INDEMNITY COMPANY,

By E. A. VALENTINE.

Dated August 27, 1942.

Approved as to form, amount and surety.

CLARENCE J. YOUNG,

Proctor for Western Transportation Co.

[Endorsed]: Filed August 27, 1942. [79]

And afterwards, to wit, on Thursday, the 27th day of August, 1942, the same being the 46th Judicial day of the Regular July, 1942, Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [80]

[Title of District Court and Cause.]

ORDER STAYING EXECUTION

Pending the appeal of this case, or until the further order of this Court or the Appellate Court,

It Is Ordered that execution of the decree entered in this Court August 20, 1942, be stayed as to both parties, the bonds already filed to stand as super-sedeas bonds.

Dated this 27th day of August, 1942.

CLAUDE MCCOLLOCH,
Judge.

The foregoing Order is hereby stipulated.

CLARENCE J. YOUNG,
Proctor for Libelant.

ERSKINE WOOD,
Proctor for Claimant.

[Endorsed]: Filed August 27, 1942. [81]

And afterwards, to wit, on the 4th day of September, 1942, there was duly filed in said Court, a Citation on Appeal in words and figures as follows, to wit: [82]

District Court of the United States of America
District of Oregon

CITATION ON APPEAL

To Western Transportation Co., and to Clarence J. Young, Esq., its Proctor, Greeting:

Whereas, American-Hawaiian Steamship Company has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law:

You are Therefore Hereby Cited and Admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 2nd day of September, in the year of our Lord, one thousand nine hundred and forty-two.

CLAUDE McCOLLOCH

Judge.

Service accepted Sept. 7, 1942. Clarence J. Young of Proctors for Western Transp. Co.

[Endorsed]: Filed Sep. 4, 1942. [83]

And afterwards, to wit, on Saturday, the 26th day of September, 1942, the same being the 71st

Judicial day of the Regular July, 1942, Term of said Court; present the Honorable Claude McCulloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [84]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
TRANSCRIPT AND EXHIBITS

On application of appellant, American-Hawaiian Steamship Company, and for good cause shown,

It Is Ordered that the time for filing the transcript and exhibits in the United States Circuit Court of Appeals on said Appellant's appeal in this cause be and it is hereby extended to and including November 20, 1942.

Dated this 26th day of September, 1942.

CLAUDE MCCOLLOCH,
Judge.

The foregoing Order is stipulated.

ERSKINE WOOD,

Proctor for Appellant.

CLARENCE J. YOUNG,

Proctor for Appellees. [85]

And afterwards, to wit, on the 12th day of November, 1942, there was duly filed in said Court, a Notice of Cross Appeal, in words and figures as follows, to wit: [86]

[Title of District Court and Cause.]

NOTICE OF CROSS APPEAL

To George H. Marsh, Clerk, and Erskine Wood,
Proctor for Respondent, Claimant and Cross
Libelant.

Sirs:

Please take notice that Western Transportation Company, a corporation, libelant and cross-respondent in the above entitled cause, hereby cross appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of this Court entered herein on the 20th day of August, 1942. On said cross appeal Western Transportation Company desires only to review the questions involved in said cause which are stated in the petition for cross appeal filed herewith.

Dated this 12th day of November, 1942.

Respectfully,

CLARENCE J. YOUNG,

Proctor for Western Transportation Company, Libelant and Cross Respondent,
800 Pacific Building,
Portland, Oregon. [87]

The within appeal is hereby allowed.

CLAUDE McCOLLOCH,

United States District Judge.

State of Oregon,

County of Multnomah—ss.

Service of the foregoing Notice of Cross Appeal

by copy, as prescribed by law is hereby admitted, at Portland, Oregon, this 12th day of November, 1942.

ERSKINE WOOD,

Proctor for American-Hawaiian Steamship Company,
Respondent, Claimant and
Cross Libelant.

[Endorsed]: Filed November 12, 1942. [88]

And afterwards, to wit, on the 12th day of November, 1942, there was duly filed in said Court, a Petition for Cross Appeal, with order allowing appeal endorsed thereon, in words and figures as follows, to wit: [89]

[Title of District Court and Cause.]

PETITION FOR CROSS APPEAL AND
ORDER ALLOWING CROSS APPEAL

To the Honorable Judges of the District Court of
the United States for the District of Oregon:

Sirs:

Western Transportation Company, libelant and cross respondent, being aggrieved by the final decree, rulings and findings of the United States District Court in the above entitled cause, claims a cross appeal from certain portions of said decree, rulings and findings and prays that its said cross appeal may be allowed.

On the appeal the appellant desires to review the following questions only:

1. The propriety of that portion of the final decree holding the "Barry K" equally at fault with the "Pennsylvanian" for the collision and ordering that the damages thereto should be equally divided. [90]

2. The propriety of that portion of the final decree providing that American-Hawaiian Steamship Company recover of and from Western Transportation Company and from its Stipulator, American Bonding Company, one-half the difference of the damages to the "Pennsylvanian" and "Barry K" with interest, said difference being \$14,671.82, and one-half thereof being \$7,335.91.

3. The propriety of that portion of said final decree providing that in addition and by way of recoupment said American-Hawaiian Steamship Company recover the sum of \$5,451.66, being one-half the amount which said American-Hawaiian Steamship Company and its Stipulator are required by the decree to pay cargo on Barges Nos. 22 and 24, making the total recoverable sum of \$12,787.57.

4. The propriety of that portion of said final decree ordering that American-Hawaiian Steamship Company recover the sum of \$12,787.57 of and from Western Transportation Company and its Stipulator with interest thereon at the rate of 6% per annum from the date of the decree until paid.

5. The propriety of that portion of the decree ordering Western Transportation Company to bear its own costs.

6. The failure of the United States District Court to enter a decree in favor of Western Transportation Company for its entire damage.

7. The several matters alleged as error in the assignments of error herewith filed.

And your petitioner will ever pray, etc.

Dated this 12th day of November, 1942.

WESTERN TRANSPORTA-
TION COMPANY, a corpora-
tion,

Libelant and Cross-Respond-
ent.

By CLARENCE J. YOUNG,
Its Proctor.

The foregoing petition and the cross appeal there-
in prayed for are hereby allowed.

CLAUDE McCOLLOCH,
United States District Judge.
[91]

State of Oregon,
County of Multnomah—ss.

Service of the foregoing Petition for Cross Ap-
peal and Order Allowing Cross Appeal by copy, as
prescribed by law is hereby admitted, at Portland,
Oregon, this 12th day of November, 1942.

ERSKINE WOOD,
Proctor for American-Ha-
waiian Steamship Company,
Respondent, Claimant and
Cross Libelant.

[Endorsed]: Filed November 12, 1942. [92]

And afterwards, to wit, on the 12th day of November, 1942, there was duly filed in said Court, an Assignment of Errors on cross-appeal, in words and figures as follows, to wit: [93]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Western Transportation Company, libelant and cross-respondent, hereby assigns errors in the proceedings, decisions and decree of the United States District Court as follows:

1. In holding that there was negligent handling of the "Barry K", constituting a proximate cause of the collision in that it failed to stop engines when the "Barry K" blew the first danger signal.

2. In holding that Western Transportation Company should pay one-half the difference of the damages sustained by the "Barry K" and "Pennsylvanian".

3. In holding that American-Hawaiian Steamship Company should recover by way of recoupment one-half the amount which American-Hawaiian Steamship Company was required to pay cargo on Barges Nos. 22 and 24.

4. In holding that American-Hawaiian Steamship Company should recover from Western Transportation Company any damages whatsoever. [94]

5. In requiring Western Transportation Company to pay its own costs.

6. In failing to hold that the "Barry K" was carefully navigated at all times; that it was free

from fault, and in not entering decree in favor of Western Transportation Company accordingly.

7. In failing to hold that the "Pennsylvanian" was solely at fault in respect to the collision.

8. In failing to hold that the "Pennsylvanian" was at fault in not giving proper or any heed to the several whistle signals by the "Barry K" for a starboard passage, and that this proximately caused the collision.

9. In failing to hold that the "Pennsylvanian" was at fault in crossing the starboard passing signal of the "Barry K" with port passing signal, which circumstances proximately caused the collision.

10. In failing to hold that the "Pennsylvanian" did not ascertain the position of the "Barry K" or take steps to avoid the collision, thus proximately causing same.

11. In failing to hold the "Pennsylvanian" at fault in not changing her course to port, but continuing to starboard and toward shallow water, and that she thereby proximately caused the collision.

12. In failing to hold that under all circumstances then present the "Pennsylvanian" was proceeding at an immoderate rate of speed and thereby proximately caused the collision.

13. In failing to hold that the "Pennsylvanian" was at fault in not using the open and available main ship's channel at and before the time of the collision, thereby proximately causing the same.

14. In failing to hold that the "Pennsylvanian" was at fault in not having available a competent

person to drop the anchors, and in failing to drop the anchors, thereby proximately causing the collision. [95]

15. In failing to decree recovery by Western Transportation Company from American-Hawaiian Steamship Company of Western Transportation Company's entire damage.

Respectfully,

CLARENCE J. YOUNG,

Proctor for Western Transportation Company, Libelant and Cross-Respondent.

State of Oregon,

County of Multnomah—ss.

Service of the foregoing Assignment of Errors by copy, as prescribed by law is hereby admitted, at Portland, Oregon, this 12th dat of November, 1942.

ERSKINE WOOD,

Proctor for American-Hawaiian Steamship Company, Claimant, Respondents and Cross-Libelant.

[Endorsed]: Filed November 12, 1942. [96]

And Afterwards, to wit, on the 12th day of November, 1942, there was duly Filed in said Court, a Bond for Costs on cross-appeal in words and figures as follows, to wit: [97]

[Title of District Court and Cause.]

BOND FOR COSTS ON CROSS APPEAL

Know All Men By These Presents, That Fidelity & Deposit Company of Maryland, a Maryland corporation, authorized to and doing a surety business in Oregon, is held and firmly bound unto American-Hawaiian Steamship Company, a corporation, in the sum of Two Hundred Fifty and no/100 Dollars (\$250.00) to be paid to said American-Hawaiian Steamship Company, its successors and assigns, for the payment of which well and truly to be made, the undersigned Fidelity & Deposit Company of Maryland binds itself, its successors and assigns, firmly by these presents.

The condition of this obligation is such that whereas Western Transportation Company has prosecuted or is about to prosecute a cross appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a final decree entered in the above entitled court and cause on the 20th day of August, 1942; [98]

Now, Therefore, if the above named cross appellant, Western Transportation Company, shall prosecute said appeal with effect and pay all costs which may be awarded against it if the cross appeal is not sustained, then this obligation shall be void,

otherwise the same shall remain in full force and effect.

[Seal]

FIDELITY & DEPOSIT
COMPANY OF MARYLAND
CLARENCE D. PORTER
Its Attorney in Fact
Clarence D. Porter.

Dated this 12th day of November, 1942.

Approved as to form, amount and surety.

ERSKINE WOOD

Proctor for American-Ha-
waiian Steamship Company

State of Oregon

County of Multnomah—ss.

Service of the foregoing Bond for Costs on Cross Appeal by copy, as prescribed by law is hereby admitted, at Portland, Oregon, this 12th day of November, 1942.

ERSKINE WOOD

Proctor for American - Ha-
waiian Steamship Company,
Respondent, Claimant and
Cross Libelant.

[Endorsed]: Filed November 12, 1942. [99]

And Afterwards, to wit, on the 17th day of November, 1942, there was duly Filed in said Court, a Citation on Cross-Appeal in words and figures as follows, to wit: [100]

District Court of the United States of America
District of Oregon

CITATION ON APPEAL

To American-Hawaiian Steamship Company and to
Erskine Wood and Erskine B. Wood, Its Proc-
tors, Greeting:

Whereas, Western Transportation Company has
lately appealed to the United States Circuit Court
of Appeals for the Ninth Circuit from a decree
rendered in the District Court of the United States
for the District of Oregon, in your favor, and has
given the security required by law;

You Are Therefore Hereby Cited and Admon-
ished to be and Appeal before said United States
Circuit Court of Appeals for the Ninth Circuit, at
San Francisco, California, within thirty days from
the date hereof, to show cause, if any there be, why
the said decree should not be corrected, and speedy
justice should not be done to the parties in that
behalf.

Given under my hand, at Portland, in said Dis-
trict, this 17th day of November, in the year of our
Lord, one thousand nine hundred and forty-two.

CLAUDE McCOLLOCH

Judge.

United States of America,
State of Oregon,
County of Multnomah—ss.

Service of the foregoing Citation on Appeal, by

copy, as prescribed by law, is hereby admitted at Portland, Oregon, this 17th day of November, 1942.

ERSKINE WOOD

Of Proctors for Respondents.

[Endorsed]: Filed Nov. 17, 1942. [101]

And Afterwards, to wit, on the 19th day of November, 1942, there was duly Filed in said Court, a Copy of Order of the *United Circuit* Court of Appeals extending time to docket transcript of record, in words and figures as follows, to wit: [102]

United States Circuit Court of Appeals
For the Ninth Circuit

AMERICAN HAWAIIAN SS COMPANY,
Appellant,

vs.

WESTERN TRANSPORTATION COMPANY,
Appellee.

and

WESTERN TRANSPORTATION COMPANY,
Appellant,

vs.

AMERICAN HAWAIIAN SS COMPANY,
Appellee.

ORDER EXTENDING TIME TO FILE
APOSTLES ON APPEALS

Upon consideration of the telephonic request of Mr. Erskine Wood, proctor for American Hawaiian Steamship Company, and good cause therefor appearing, It Is Ordered that the time within which the certified apostles on appeals in above case may be filed in this court and the cause docketed be, and hereby is extended to and including November 30, 1942.

CURTIS D. WILBUR
Senior United States
Circuit Judge.

Dated: San Francisco, Calif., November 16, 1942.

[Endorsed]: Order, etc. Filed Nov. 16, 1942. Paul P. O'Brien, Clerk.

[Endorsed]: Filed Nov. 19, 1942. G. H. Marsh, Clerk. [103]

And Afterwards, to wit, on Tuesday, the 14th day of November, 1942, the same being the 14th Judicial day of the Regular November, 1942, Term of said Court; present the Honorable Claude McCulloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [104]

In the District Court of the United States

For the District of Oregon

No. Civ. 727

WESTERN TRANSPORTATION CO., a corporation,
tion,

Libelant,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, and the SS "PENNSYLVANIAN", her engines, boilers, etc.,

Respondents.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,

Claimant.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,

Cross-Libelant,

vs.

WESTERN TRANSPORTATION CO., a corporation, and the steamboat "BARRY K", Etc., and Barges 22 and 24,

Cross-Respondents.

ORDER TO SEND TO APPELLATE COURT
ORIGINAL TRANSCRIPT OF TESTIMONY
AND ORIGINAL EXHIBITS

It Is Hereby Ordered that the Clerk of this Court send to the United States Circuit Court of Appeals at San Francisco the original transcript of the testimony and all original exhibits in this Court and

cause, for use on the appeals, in this cause, to said Appellate Court.

Dated this 17th day of November, 1942.

CLAUDE McCOLLOCH

Judge.

The foregoing order jointly requested by:

ERSKINE WOOD

Proctor for American-
Hawaiian Steamship
Company

CLARENCE J. YOUNG

Proctor for Western
Transportation Co.

[Endorsed]: Filed Nov. 17, 1942. [105]

CERTIFICATE OF CLERK TO
APOSTLES ON APPEAL

United States of America
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 105 inclusive, constitute the apostles on appeal in a cause in said court numbered Civil 727, in which the Western Transportation Company is libelant, appellee, and appellant, on the cross-appeal, and the American-Hawaiian Steamship Company, a corporation, is respondent and claimant of the SS "Pennsylvanian", and appellant, and appellee on the cross-appeal; that said transcript has been

prepared by me in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit; that I have compared the foregoing apostles with the original record thereof and that the foregoing apostles are a full, true and correct transcript of the record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is \$5.00 for filing Notice of Appeal, and \$14.30 for comparing and certifying the within transcript, making a total of \$19.30, and that the same has been paid by said appellants; and \$5.00 for filing Notice of Cross-Appellant and \$5.70 for comparing and certifying transcript required by the cross-appellant, making a total of \$10.70, which has been paid by cross-appellant.

I further certify that I am transmitting with said transcript, by order of the Court, the original testimony filed in said cause and Libelant's exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 16, and Respondent's exhibits 9, 10, 11, 12, 13, 14, 17 and 18, being all of the original exhibits introduced in evidence in said cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this 24th day of November, 1942.

[Seal]

G. H. MARSH,
Clerk. [106]

TRANSCRIPT OF EVIDENCE

Portland, Oregon, Tuesday, July 15, 1941

8:00 o'clock A.M.

Before:

Honorable Claude McColloch, Judge.

Appearances:

Messrs. Dey, Hampson & Nelson (By Messrs. Clarence J. Young and Richard B. Maxwell), Proctors for Western Transportation Company, Libelant, Claimant and Respondent to Cross-Libel. [1*]

Messrs. Wood, Matthieseen & Wood (By Messrs. Erskine Wood and Erskine B. Wood), Proctors for American-Hawaiian Steamship Company, Claimant of the *Pennsylvanian*, and Respondent to the original Libel, and Cross-Libelant.

PROCEEDINGS

The Court: Ready?

Mr. Young: Yes, your Honor. If the Court please, as a preliminary matter, I should like the record to show that it has been stipulated between counsel for the American-Hawaiian Steamship Company and the Steamship *Pennsylvanian*, on the one hand, and myself as counsel for Western Transportation Company and the *Barry K*, that this cause shall be tried at this time solely upon the

*Page numbering appearing at top of page of original Reporter's Transcript.

question of liability; that the matter of damages shall be deferred to a future time, either with the possibility of some agreement between the parties respecting what those damages are, or possibly a reference to a Master. That is agreeable, I understand?

Mr. Wood: I understand that was his Honor's own wish also.

The Court: Quite satisfactory.

Mr. Young: I should like at this time also, your Honor, to make a slight amendment in the original libel of Western Transportation Company against the American-Hawaiian Steamship [2] Company, on page 2, Article IV, line 21. At the present time the language reads that Barge 22 was "made up on the port bow of the Barry K." The word "port" should be omitted. The Barge 22 was being pushed on the bow of the Barry K, and the word "port" was inserted there by inadvertence. I should therefore like for the word "port," in line 21, the third word in the line, to be omitted.

The Court: Is there objection?

Mr. Wood: No objection.

LIBELANT'S EVIDENCE

Mr. Young: Mr. Wood and I have agreed upon the introduction of certain exhibits in evidence. I should like therefore at this time on behalf of Libelant to have marked certain maps and photographs as exhibits on behalf of Libelant. The first one——

The Court: Before we get into the trial, Mr.

Wood mentioned a view of the locus in quo. Do you have any ideas about that?

Mr. Young: I have no objection to that—the accident occurred at night, your Honor understands.

The Court: We will leave it this way; at the request of either party, or on my own suggestion, a view will be had at the conclusion of testimony.

Mr. Young: Very well.

I should like the reporter now to mark as Libelant's Exhibit 1 a map designated "Port of Portland Including Vancouver," [3] and prepared by the United States Coast and Geodetic Survey, being accurate as of August 24, 1940. Council has stipulated that may be introduced.

(The map, so offered, was received in evidence and marked Libelant's Exhibit 1.)

Mr. Young: We now offer in evidence, pursuant to this stipulation, a map of the Willamette River from its mouth to the Broadway Bridge, prepared under date of July 23, 1940, by the United States Engineers' office, Portland, Oregon.

(The map, so offered, was received in evidence and marked Libelant's Exhibit 2.)

Mr. Young: Next is a photograph showing the forward portion of the tugboat Barry K which was owned by the Western Transportation Company and is involved in this accident.

(The photograph, so offered, was received in evidence and marked Libelant's Exhibit 3.)

Mr. Young: Libelant's 4 is another photograph of the forward part of the Barry K taken from a

slightly different position from the previous photograph.

(The photograph, so offered, was received in evidence and marked Libelant's Exhibit 4.)

Mr. Young: Libelant's 5 is a photograph showing the Barry K pushing two barges, one, No. 22, on the nose of the Barry K, and one, No. 24, on the forward port side of the Barry K. [4]

(The photograph, so offered, was received in evidence and marked Libelant's Exhibit 5.)

Mr. Young: The photograph which has just been identified shows the Barry K with its barges made up as they were at the time of the collision.

Next is a photograph of the Barry K pushing the same two barges which are made up in the same manner, the picture in this instance showing the Barry K coming toward the camera, and it is taken from the starboard side of the Barry K.

(The photograph, so offered, was received in evidence and marked Libelant's Exhibit 6.)

Mr. Young: Libelant's 7 is another photograph of the Barry K pushing the same two barges, 24 and 22, which are made up in the same manner as previously indicated. This photograph shows the Barry K with its barges proceeding toward the camera, and it is taken from the port side of the Barry K.

(The photograph, so offered, was received in evidence and marked Libelant's Exhibit 7.)

Mr. Young: Those are all of the exhibits at this time, your Honor.

(Thereupon opening statements were made in behalf of the respective parties, after which the following testimony was given:) [5]

WM. A. REED,

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. State your name, please.

A. Wm. A. Reed.

Q. And where do you live?

A. 7576 North Fowler.

Q. In Portland? A. In Portland.

Q. And how long have you lived here?

A. Since about 1922.

Q. What is your occupation?

A. Master and pilot.

Q. How long have you held a Master's license?

A. I have held a Master's license since about 1922.

Q. And what does that Master's license include?

A. It includes a Master of unlimited steam and motor vessels and first-class pilot from Astoria to Camas and West Linn.

Q. During what period of time have you operated boats on the Willamette and Columbia rivers?

A. For about the past twenty years.

Q. And to what extent has that experience included—— A. Pardon——

Q. What? [6]

(Testimony of Wm. A. Reed.)

A. That question again. You say the Willamette and Columbia?

Q. Yes.

A. About twenty-three years.

Q. And to what extent has that experience included the operation of boats over around what is known as Post Office Bar in the lower Willamette?

A. Oh, the past nineteen or twenty years.

Q. Were you the pilot on the Barry "K" at the time of the collision which occurred with the Pennsylvanian on February 1 of this year.

A. I were.

Q. You were in the employ of the Western Transportation Company? A. Yes, sir.

Q. Captain, I would like you to give to the Court the dimensions of the Barry "K". Let us in the first place give the Court the length of the Barry "K". A. 160 feet.

Q. Does that include the wheel?

A. No, that is the hull.

Q. She is a stern-wheeler, is she not?

A. Yes, sir.

Q. And how long is the stern wheel?

A. Well, the wheel housing would go back, I should judge, about thirty feet.

Q. Now, what superstructure is there on the Barry "K"? [7]

A. Well, there is a lower house and a cabin house, a Texas and a pilot house.

Q. Now, the lower house, how high is that above the deck of the vessel? A. Nine feet.

(Testimony of Wm. A. Reed.)

Q. And throughout what length of the hull does that extend?

A. Well, the house is 129 feet long.

Q. Now, immediately above the house is what deck?

A. The cabin.

Q. And is there a further housing on that deck?

A. Yes, sir.

Q. What is that?

A. The Texas.

Q. That is the Texas, as you call it?

A. Yes, sir.

Q. And how high is the Texas?

A. Seven feet.

Q. Throughout what distance does that Texas extend along the cabin deck or along lengthwise of the ship?

A. Twenty-two and a half feet.

Q. And what is above the Texas?

A. Pilot house.

Q. And how high is the pilot house?

A. Seven and a half feet.

Q. What is the total distance from the water line to the top [8] of the pilot house?

A. Approximately about thirty-four feet, thirty-four or thirty-five feet.

Q. Now, does she have a whistle behind the pilot house?

A. Yes.

Q. And how high does that extend above the water line or above the top of the pilot house?

A. About 20 feet, 15 to 20.

Q. The pleadings, I think, in this case show

(Testimony of Wm. A. Reed.)

that at the time of the accident you were pushing two barges, numbered 22 and 24; is that correct?

A. Right.

Q. Where was barge No. 22?

A. Directly on the bow.

Q. And what was the length of barge 22?

A. About 135 feet.

Q. Did she have a house on top of her?

A. She did.

Q. And throughout what length of the deck of the barge did the house extend?

A. Oh, for about eight to ten feet from each end.

Q. Which would make the length of the house about what?

A. About 115—10 or 15 feet.

Q. And what is the height of the house above the water line?

A. Oh, about twenty feet. [9]

Q. That would vary somewhat in accordance with the load carried, would it? A. Right.

Q. Of what material was the barge constructed?

A. The hull was steel and the house was wood.

Q. Now, were the dimensions of barge No. 24 substantially the same as those of barge 22?

A. The same exactly.

Q. They were sister barges?

A. Yes, sir.

Q. Where was barge No. 24?

A. On the port bow.

(Testimony of Wm. A. Reed.)

Q. How far back from the forward end of barge 22 would you say the forward end of barge 24 was? A. About one-fourth of the way.

Q. Was the Barry "K" equipped with whistle?

A. She was.

Q. Where was the whistle located?

A. Forward of the smokestack.

Q. Where with reference to the top of the pilot house?

A. Oh, better than three feet above.

Q. Was that an efficient whistle?

A. Yes, sir.

Q. Do you know throughout what distance it could be heard?

A. Well, I don't know. I have heard her six miles when I was [10] home. I have heard her over at Vancouver.

Q. The accident occurred at night, I believe?

A. It did.

Q. Now, at the time that this accident occurred, what lights were there on the Barry "K"?

A. Two mast lights and a starboard and port light.

Q. Now, just describe to the Court what those mast lights were.

A. They were two bright white lights on the mast, over the pilot house, about three feet apart or a little better.

Q. One over the other?

A. One over the other, in a vertical line.

(Testimony of Wm. A. Reed.)

Q. State whether or not those lights shown all around the horizon? A. They did.

Q. Where was the green light to which you refer?

A. On the starboard side, built up from the bridge, the end of the bridge.

Q. And throughout what arc of the horizon did that light show?

A. Ten points of the compass.

Q. Ten points of the compass? A. Yes.

Q. Commencing straight ahead and swinging around how far?

A. Two points abaft of the beam on the starboard side.

Q. What is the beam to which you refer?

A. That is athwartship or straight across the vessel.

Q. And this light cast its rays to a point two points back of [11] that toward the rear; is that right? A. That is right.

Q. Now, where was the red light?

A. On the port side, right opposite the starboard side, on the port side of the pilot house.

Q. And throughout what part of the horizon or arc of the horizon did that light cast its rays?

A. Just the same as the starboard on the port side and straight ahead to two points abaft of beam.

Q. The photograph which has been introduced in evidence shows a light on the bow of the Barry

(Testimony of Wm. A. Reed.)

“K” immediately above the main deck. What is that light?

A. Oh, that is your bow light or your range light, to range up with your mast light.

Q. Was that light lighted at the time of the accident? A. No, sir.

Q. Why not?

A. Because there was a twenty-foot house on that barge right directly ahead of it about 10 or 15 feet and the reflection would have been right back in my eyes; I couldn't have seen anything on a dark night.

Q. Would it have been possible for anyone looking toward the forward end of the Barry “K” to have seen that light had it been lighted?

A. Yes. [12]

Q. A person looking toward the forward end of the Barry “K”?

A. Oh, toward the forward end of the Barry “K”? No.

Q. Why not?

A. That 20-foot house directly ahead of it.

Q. Now, what lights were there on the barges?

A. We had a coal oil lantern on the starboard, forward corner of barge No. 22, which was on the bow of the Barry “K”.

Q. What color?

A. White; oil lantern. And we had the same identical lantern on the port, forward corner of barge No. 24; and also one on the port, after corner of barge 24.

(Testimony of Wm. A. Reed.)

Q. Those were all white lights?

A. All white lights.

Q. And about how high above the deck of the barge would you say those lights were?

A. Oh, five and six feet.

Q. And to what were they affixed?

A. A nail or a hook in the corner of that house.

Q. Now, throughout what arc of the horizon did those three lights themselves cast their rays; the three lights together, I mean?

A. Well, a good three-quarters of an arc of a circle.

Q. To any ship approaching from the forward side—part of the Barry “K”, were those lights visible? A. They were.

Q. And how far ahead of the Barry “K” was it possible for one to [13] see those lights?

A. A good dark, clear night, you ought to see them at least two miles or better.

Q. And was it possible to see those lights two miles on the night of this accident?

A. It was.

Q. Will you state whether or not those lights on the barges were affixed in the manner in which they have customarily been fixed?

A. The same thing exactly.

Q. Over what period of time?

A. Ever since I can remember.

Q. Ever since you can remember? A. Yes.

Q. That would be how far back?

(Testimony of Wm. A. Reed.)

A. Twenty years, twenty-three.

Q. In other words, during twenty years of time it had been customary to use the lights on those barges in that manner?

A. Practically the same kind of lights.

Q. Do you have here in the courtroom a light of the same type as that which was used on one of those barges?

A. I have.

Q. Where is that light?

A. Right over by Captain Williams.

Q. Is this a light that was on the barges at the time of the accident?

A. No. [14]

Q. Do you know where those lights are at the present time?

A. No. It is a standard lantern.

Q. They were a standard lantern?

A. They were all a standard lantern.

Q. Is the lantern which I am about to show you one identical in construction with those lights?

A. Absolutely.

Q. Will you examine the lantern now which the bailiff is handing you and state whether that is such a lantern?

A. That is one of the standard lanterns that they use on their barges and log rafts.

Q. And was it a lantern of that type that you had on barges 22 and 24 the night of the accident?

A. It was.

Q. What can you say as to whether or not the globes in those lights at that time were clean?

(Testimony of Wm. A. Reed.)

A. That is always a regular routine of the watchman and the deck boy; takes the lanterns off the barges at daylight to wash those globes and fill the tanks with oil.

Mr. Young: We offer this lantern in evidence.

The Court: I think you ought to explain to Mr. Maxwell and Mr. Wood, Jr., what coal oil is.

Mr. Maxwell: I don't know; I am from Indiana.

Mr. Young: Q. Well, what are coal oil lamps?

A. Kerosene. [15]

(The lantern, so offered, was received in evidence and marked Libellant's Exhibit 8.)

Mr. Young: Q. Was the steering gear of the Barry "K" in good condition? A. Yes, sir.

Q. What was your official capacity on the Barry "K" at the time of the accident?

A. Pilot.

Q. Had you at any previous time been the Master of the Barry "K"? A. Yes, sir.

Q. During what period of time?

A. The 11th of May, 1940, up until she went on the paper run, which I am not positive, but I think it was along in December.

Q. Of 1940? A. Yes, sir.

Q. Prior to May of 1940, had the Western Transportation Company owned the Barry "K"; do you know?

A. They had owned her for sometime, but she was not in commission.

(Testimony of Wm. A. Reed.)

Q. Not in commission? A. No.

Q. You took her over when she went into commission for Western Transportation Company?

A. Yes, sir.

Q. And then commencing in December, why did you cease to be the Master? [16]

A. Well, Captain Williams was an older man in the company and the *Claire*, which he had been on on the paper run, was tied up for repairs, and naturally in the seniority rule he took the Master's place on the *Barry "K"*.

Q. And was Captain Williams on the *Barry "K"* at the time of the accident? A. He was.

The Court: Whose seniority rule?

A. Captain Williams seniority.

Mr. Young: Q. The Court has inquired as to whose seniority rule. What rules were those?

A. Why, the oldest man really has the best position.

Q. I mean, were those union rules?

A. Oh, no, just company rules.

Q. Company rules? A. Yes.

Q. The principle being, as you say, the oldest man has the best position; is that it?

A. That is it.

Q. Now, where did you start your trip the night of this accident?

A. I started mine just below the Vancouver bridge.

Q. At what time did you go on duty; do you remember? A. 12:10.

(Testimony of Wm. A. Reed.)

Q. On what date was this? [17]

A. February 1.

Q. The date of the accident?

A. Yes, sir.

Q. And where was your ship bound?

A. The Weidler Dock in Portland.

Q. You have already described the manner in which the barges were attached to the Barry "K". What loads did they carry?

A. They carried paper.

Q. Did they both carry about the same amount?

A. No, 24 had a little more of a load on her than 22.

Q. And what effect did that have on the manner in which she rested in the water?

A. Barge 24 would draw about six inches to a foot more than barge 22.

Q. What did barge 22 draw?

A. About four feet, approximately.

Q. And barge 24 about four feet and a half?

A. It would be about a half to a foot deeper.

Q. And what did the Barry "K" draw?

A. Two foot eight.

Q. Now, which way did you proceed after leaving Vancouver?

A. On down the Columbia.

Q. And then after coming down the Columbia, where did you go?

A. Swung into the mouth of the Willamette.

(Testimony of Wm. A. Reed.)

Q. After swinging into the mouth of the Willamette, which side [18] of the river did you proceed up?

A. I was on the east side of the river, or that side that lies to my left.

Q. What was the condition of the weather on this night?

A. Oh, it was clear and dark and a breeze blowing.

Q. How much of a breeze was there?

A. Oh, about ten or fifteen miles, I should judge.

Q. And from which direction was the breeze coming? A. Easterly breeze.

Q. In proceeding upstream on the left-hand side, why did you take that position?

A. To keep from crossing the ship channel and it is the way that the river craft has always proceeded.

Q. During what period of time have river craft always proceeded up the left-hand side of the channel at that point?

A. In all my experiences in the river.

Q. And that is since when?

A. About 1918, but I was down in Astoria, but up here for the last 23 or 24 years.

Q. Have you ever known any exceptions to that rule to exist?

A. No, I can't recall any. There might be.

Q. Why is it that the river boats travel up that side of the stream?

(Testimony of Wm. A. Reed.)

A. Well, it is the shallower water, leaves the deeper water which lies to the west side for the ocean-going vessels. [19]

Q. Where is the channel in the river between the Willamette River entrance and, let us say, the Multnomah channel entrance?

A. Well, the channel varies from easterly to westerly. By the Multnomah channel it is a little more to the east side; then down to the Post Office Bar Range, it is more to the west side; follows that down, on down to Post Office Lower, clear on down to Gillihan's, and then from the Willamette River entrance practically in the middle of the river from there on out to the mouth.

Q. Where is the shallower water in coming upstream from the mouth of the Willamette to the Multnomah channel entrance?

A. The more shallow would be on the east side practically up to Post Office Bar and then there is a shoal—there is no snags on it that I know of—just up to the mouth of the Willamette River entrance.

Q. How wide is that shallow water around Post Office Bar on the east side?

A. Oh, it will go 200 feet.

Q. 200 feet? A. Or better, yes.

Q. Could you operate your river boat and its barges through that water?

A. Practically all of them.

Q. With safety?

(Testimony of Wm. A. Reed.)

A. Practically all of them. [20]

Q. Pardon? A. Practically all of it.

Mr. Young: Does your Honor hear this all right? I would like to have the witness speak a little more loudly, if necessary.

Q. Now, on the west side of the river, what is there located there?

A. Well, there is a mud bank consisting, from the mouth up—it is a shoal from the mouth, I would say, up to Gillihan's Landing, and from there there is a mud bank which drops up, I should say, from three to four feet, and from there on up there is a piling dike driven above Post Office Bar with a short jog and then there is another dike that runs clear on up to the Multnomah channel. This dike consists of piling, which sticks out of the water three to four feet and I presume if it is according to all of our other dikes, which I think it is, it is filled in with rock. That is to keep the wash from the island, caving the banks.

Q. Now, if you were proceeding upstream with barges, such as you had, and you were proceeding up the west side instead of the east side, how far off that dike would you have to remain in order to be reasonably safe?

A. Well, that depends on your wind velocity and swells; the wheel would be into that dike; if there was an east wind you would have to bear into the wind with the bow of your tow in order to keep from blowing ashore. You would be com-

(Testimony of Wm. A. Reed.)

ing up at a [21] right angle with your bow headed more into the wind than the course you are taking, to eliminate the slip and the wind resistance upon the boat, to keep your wheel out of that dike. The bow of your tow would be, let's see—my tow was, I would say, better than 200 feet, the bow of my tow would have to be out from that dike practically, to be safe.

Q. What was the total length over-all from the front end of barge No. 22 to the rear of your stern wheel?

A. Oh, about 125 feet, approximately. 325 feet.

Q. 325 feet?

A. The boat is 160, the barge is 135, with about a 25-foot or 30-foot wheel house.

Q. In answering one of your questions just now, you used the word "slip." What do you mean by that?

A. Well, it is the same as a wind blowing anything sideways; it is sliding instead of going ahead; it is sliding sideways, is slippage.

Q. Is that slippage something which a light-draft boat is more subject to than a deep-draft boat?

A. Yes, sir.

Q. And why is that?

A. Well, it is not drawing the water, flat-bottomed.

Q. Has it been your observation that ocean-going ships are subject to slippage as river boats?

Mr. Wood: Pardon me. He hasn't shown any knowledge of ocean- [22] going ships yet.

(Testimony of Wm. A. Reed.)

Mr. Young: Strike the question.

Q. Now, what has been your observation with respect to the effect of displacement swell from ocean ships and its effect upon river boats?

A. Well, it will break your lines and I have seen it tear cavils off the boats.

Q. For you to operate your river boat up the west side of that channel and meet an ocean-going ship going downstream, would there be any hazard to you from the displacement swell of the ocean ship?

A. Oh, yes, considerable.

Q. Will you explain that answer to the Court?

A. Well, there would be a closer passing and then the ship being on the swing, the outside swing of the ship throws a bigger swell than the inside, and we would be close to the dike. If you would break a line or a cavil and the wind was blowing, you would be on the dike before you would ever get your tow made up again or catch your barges.

Q. On the other hand, if you were traveling up the east side of the stream when that same ocean ship were coming downstream, what effect, if any, would the displacement swell have upon you?

A. It wouldn't have as much effect, but if anything let go, you would have the full width of the river to regain your tow and get under way before blowing ashore. [23]

Q. We have assumed we all understand what you mean by displacement swell, but will you explain that?

(Testimony of Wm. A. Reed.)

A. Well, rushing through the water, just the same as forcing your hand through the water, it will make ripples on the water; naturally the larger object moving through the water would cause larger waves or what we term the swells.

Q. And the displacement swell is the ripple caused by the bow of the ship?

A. Yes, the speed of the ship and the size of the vessel.

Q. Now, has it been your observation that there is any swell or disturbance in the water caused by the propeller of large ocean ships?

A. Well, yes, there is a suction and then I would say a kick, if you were close to them.

Q. Would that have any effect upon your operation of the river boats if you were proceeding up the west side of the river instead of the east at Post Office Bar?

A. It would.

Q. And what?

A. Because your ships keep close to that east shore going down. That is their regular course that they have always run.

Q. To what extent has it been your observation that the Willamette River in the vicinity of Post Office Bar is used by tug boats either pushing barges or pulling log rafts?

A. They always operate on the east shore. [24]

Q. I mean to what extent is the river used at all? How frequently does traffic go up and down of that nature?

A. That is pretty hard to estimate. Sometimes

(Testimony of Wm. A. Reed.)

you will find lots of them. I have passed two and three right along in there all at once and then other times you go by you won't find any.

Q. You have mentioned that there was an easterly breeze blowing at the time of the accident?

A. Yes, sir.

Q. What is the prevailing wind in this particular area?

A. Well, at that time of the year it is practically an east wind.

Q. And what effect does the east wind have upon equipment such as that which you were operating at the time of the accident?

A. It would naturally carry you towards the west shore.

Q. You have indicated to the Court the height of the barges and the height of the superstructure on the "Barry K". Does that offer resistance to the wind from the east? A. Yes, sir.

Q. And the effect of an east wind would be to do what to your boat and barges?

A. Well, I generally always stay on the farther side towards the wind.

Q. Toward the wind? A. Yes.

Q. Now, is there any protection which your river boat would have, using the east side of the river, going upstream, rather than the [25] west side, with respect to wind?

A. It would at that point, yes.

Q. What protection?

(Testimony of Wm. A. Reed.)

A. Well, there is sand dredge dumps along there built up like a dike, with willows and cotton-woods growing onto them that causes wind protection.

Q. That is, you mean a wind-break?

A. A wind-break.

Q. These willows are on the east side of the stream, you say? A. Yes, sir.

Q. Now, referring again to this matter of side-slipping, suppose that you were proceeding upstream on the west side of the river, would you be on the outside of the curve of the stream?

A. Yes, sir.

Q. And would the tendency for you to slip sideways there be greater than it would be if you were on the inside of the curve?

A. Yes, sir.

Q. And why?

A. On account of your wind blowing there, if there is any current.

Q. And apart from the wind, would there be a tendency toward side-slipping?

A. Apart from the wind?

Q. Yes.

A. You are bound to slip as you turn; you will slip to the outside of your curve; slide to it. [26]

Q. Then do I understand that by staying on the east side of the stream you avoid the sideslipping to a considerable degree?

A. You will hug your nose of your tow into

(Testimony of Wm. A. Reed.)

the bank a whole lot more easier, your slippage, than you would going on the outside contour.

Q. I may have asked you this question and if I did you needn't answer it, but could your Barry "K" with these barges proceed with complete safety up the east edge of the stream outside the channel? A. Yes, sir.

Q. Based upon your experience as a Master of river boats and the pilots and operating in this territory, what is your opinion as to whether it would be either safe or practicable for river boats to proceed upstream on the west side of the channel at this particular point?

A. It would not be safe.

Q. And you have indicated the reasons in your prior answers? A. Yes.

Q. As you were proceeding upstream with the Barry "K" and barges, where were you when you first observed the steamer *Pennsylvanian*?

A. Right around Post Office Bar No. 3.

Q. Is Post Office Bar No. 3 the place to which I am now pointing on the engineer's map?

A. It is.

Q. And at that particular time, Captain, where did you see the [27] *Pennsylvanian*?

A. Approximately around Willamette Slough light.

Q. Around the Willamette Slough light?

A. As near as I could tell, yes.

Q. And is this——

(Testimony of Wm. A. Reed.)

A. Multnomah Channel.

Q. You mean the Multnomah Channel?

A. Technically known as Willamette Slough.

Q. I am now pointing to what is marked on this map as the Multnomah Channel entrance; is that the place to which you refer?

A. Yes sir.

Q. And was the Pennsylvanian out in the stream at that point?

A. Yes, she was coming down on the range.

Q. When you refer to the "range," what do you mean?

A. Well, there are two lights, one directly behind the other, which, if a person keeps in line, will put him right down the deepest part of the water or the channel.

Q. Now, these lights that you say are close together, where are they located?

A. At Post Office Range right about in the middle of the starting of the contour of the river, of the curvature of the river.

Q. Are you now referring to what is on this map marked as Post Office Bar Front and Post Office Bar Rear? A. Right.

Q. Is the Post Office Bar Front light out in the water? [28] A. Yes, sir.

Q. And where is Post Office Bar Rear located?

A. It sets back ashore on the land.

Q. Then this range to which you refer is a line drawn between those two lights and extending upstream? A. Yes, sir.

(Testimony of Wm. A. Reed.)

Q. So that as I understand your testimony, at the time that the Barry "K" was about opposite Post Office Bar No. 3 you were able to see the Pennsylvanian on the Post Office range at a point about opposite Multnomah Channel?

A. I could see her two mast lights when I first saw her.

Q. You could see her two mast lights? What color were they? A. White.

Q. Were you able to see any of her side lights?

A. Just shortly after that I saw her starboard light.

Q. When you saw her two mast lights and the starboard light, what did that indicate to you as to the course of the Pennsylvanian?

A. That she was coming down on Post Office range.

Q. I have assumed this was the Pennsylvanian. Did you at that time know it was?

A. No, sir.

Q. You didn't learn until after the accident what the name of the ship was? A. No, sir.

Q. For convenience, I will call it the Pennsylvanian, because we [29] are in agreement, I think, on that. Now, Captain, what did you do after you observed this ship which proved to be the Pennsylvanian?

A. I blew him two whistles.

Q. How far apart would you judge the Barry "K" was from the Pennsylvanian at that time?

(Testimony of Wm. A. Reed.)

A. Well, it is pretty hard to judge; I would say between three and four thousand feet, about three-quarters of a mile?

Q. About three-quarters of a mile?

A. Yes.

Q. And at that time you blew two blasts?

A. Yes, sir.

Q. What do those two blasts mean?

A. Pass to starboard to each other; I was supposed to stay on the east side of the channel.

Q. That is, you stay on the east side of the channel and your right side would pass the right side of the Pennsylvanian? A. Right.

Q. Did you receive any answer to that whistle?

A. Yes, sir.

Q. What answer? A. One whistle.

Q. And what did that mean to you?

A. That he crossed my whistles or misunderstood me, that he wanted to pass to port. [30]

Q. The words "crossed your signals" meant what?

A. Answering one with two or two with one.

Q. Now, when he answered with one, what did you next do?

A. I blew four short whistles or a danger whistle.

Q. Was the Barry "K" approaching the Pennsylvanian during this time?

A. Yes, sir.

Q. At the time that you blew this danger

(Testimony of Wm. A. Reed.)

whistle to which you have referred, how far apart would you say the Barry "K" was from the Pennsylvanian then?

A. Well, it wasn't very long after he give me the one whistle; I would say I cut it down about a thousand—five hundred to a thousand feet maybe; 2,500, 3,000.

Q. That is, you were about 2,500 to 3,000 feet apart at this time?

A. That is approximate, because it is pretty hard to tell the speed of the other vessel.

Q. Now, during the time that this whistling had occurred, was there any change in the course of the Pennsylvanian? A. Yes.

Q. What?

A. She swung to her starboard, coming more head on.

Q. How could you determine that she had swung to starboard?

A. You could see her mast lights swing and lining up more in a straight line.

Q. Were you able to see her red light?

A. No, not till shortly afterwards. [31]

Q. Not till afterwards? A. Yes.

Q. During the same period of time what was the course of your own Barry "K" and the barges?

A. I was bearing more to the east shore or to my port.

Q. What would you say was the approximate distance that the Barry "K" was maintaining from

(Testimony of Wm. A. Reed.)

the east shore line from the time that you entered the Willamette River until you got up to, say, Post Office Bar No. 3 light?

A. Well, I was part of the time completely east of the ship channel and part of the time right on the east edge or on the easterly side of the main ship channel.

Q. But commencing with the time that you first signalled to the Pennsylvanian, what then did you do about your course? A. Pardon?

(The last question was read by the reporter.)

A. Still kept bearing more to the east shore, giving more wheel.

Q. Now, you have testified that you gave four blasts to the Barry "K" after she crossed signals with you? A. Yes.

Q. What happened after that; did you receive an answer to the four blasts? A. No, sir.

Q. Then what did you do?

A. I blew him another starboard passing whistle, two shorts. [32]

Q. Did you have an answer to that?

A. No, sir.

Q. What next did you do?

A. I blew another danger whistle.

Q. That is four blasts? A. Yes, sir.

Q. Was there any answer to that?

A. No, sir.

(Testimony of Wm. A. Reed.)

Q. And during this time what was the course of the Barry "K"?

A. Still kept bearing over to the shoal water, figuring any minute that the other ship would understand my two whistles and go back to her ship channel.

Q. And after you had given the last danger signal to which you have testified, did you give any further signals?

A. I gave them two more shorts.

Q. And up to this time what had you done, if anything, about the speed of the boat?

A. I stopped my engine after the third whistle.

Q. Now, from the time that you had entered the Willamette River up to the time that you first saw the Pennsylvanian what would you say was the speed of the Barry "K"?

A. Oh, about six miles per hour.

Q. And at what point of time did you stop your engines?

A. What point of time?

Q. Yes. [33]

A. Well, it is pretty hard to judge. She was bearing down pretty close. I would judge a thousand feet, a little over.

Q. Following the time that you stopped your engines, was there any further signalling?

A. Yes, sir.

Q. What?

A. The other ship gave me three whistles, indicating that his engines were going full speed astern.

(Testimony of Wm. A. Reed.)

Q. About how far apart would you say you were when you received these three whistles from the Pennsylvanian?

A. Approximately about a thousand feet.

Q. And at that point of time, what did you do?

A. Well, I immediately reversed my engines full speed and blew him three whistles.

Q. Prior to the time that you reversed your engines, do I understand that you had shut your engines off, however? A. Yes.

Q. Does that mean you were coasting?

A. Coasting; gliding.

Q. And then when you threw your engines in reverse, the purpose of that was what?

A. To stop my headway, keep from having a collision.

Q. Did you give any further signals **after** you reversed your engines? A. Three blasts.

Q. And that meant what? [34]

A. That my engines were going full speed astern.

Q. At the time that you gave those three blasts, do you know about how far apart the vessels were?

A. Well, they were getting pretty close, a little less than a thousand feet, I should judge; it was pretty dark; it is pretty hard to tell.

Q. Now, from the time that you gave your last signals of three blasts of the whistle of the Barry "K", what was the direction of the Barry "K"?

A. Well, I was heading practically into the east shore.

(Testimony of Wm. A. Reed.)

Q. Into the east shore. And what was the direction at that time of the *Pennsylvanian*?

A. Directly straight on my side.

Q. On your starboard side? A. Yes, sir.

Q. Now, just tell the Court the position of the boats when the collision occurred?

A. Well, I was a little bit obliquely to the *Pennsylvanian*, but seeing we was bound to hit I backed around to the starboard so as to square up and instead of driving the barges onto the Barry "K", swept them directly off of the bow; and if I had kept driving the boat, well, it is just a chance that they would have got the steamer instead of the barges and I preferred him to get barges instead of lives. That was my opinion—or sinking the boat.

[35]

Q. At the time that the collision occurred, state whether or not the Barry "K" and barges had come to a stop?

A. I think they had come almost to a complete stop, if not a dead stop.

Q. Now, during the time that the *Pennsylvanian* was approaching you, were you able to make any estimate of her speed?

A. That is pretty hard to do. I don't know just exactly how fast those boats really run or how fast they run.

Q. What was the point on the river where the collision occurred?

A. Opposite Post Office range, I should say,

(Testimony of Wm. A. Reed.)

right opposite the rear light of the Post Office range.

Q. Opposite the rear light of the Post Office range; is that the light to which I now refer?

A. Right.

Q. And on which side of the river?

A. East side of the river.

Q. And how close to the east bank?

A. Approximately 200 feet.

Q. Where would that be with reference to the edge of the channel?

A. Well, it would be along—it is about a thirty-foot channel in there and it jumps very rapidly right at that point.

Q. Now, as I understand your testimony, the Pennsylvanian collided with the starboard side of barge 22?

A. Yes, sir.

Q. And then explain to the Court what happened. [36]

A. Well, it just broke all of the lines that were attached to the Barry "K". Naturally the Barry "K" jumped right back in the river and I stopped and the barges hung for a short duration on the bow of the Pennsylvanian and last, why they just drifted off and went down the river.

Q. And at what point of time were you able to identify the ship which you had had the collision with?

A. Oh, directly after the accident I could see her name on a port bow.

(Testimony of Wm. A. Reed.)

Q. Captain, considering the position of the Barry "K" and the Pennsylvanian at the time that you first observed the Pennsylvanian, were you able to determine the relative distances that the Pennsylvanian traveled down to the point of collision and the distance that you traveled to the same point?

A. It is pretty hard. It is pretty hard to say. I should judge that she was traveling twice as fast as I was.

Q. Now, following the collision where did your boat go? A. After the collision?

Q. Yes.

A. We backed around and went over and tied up to Silo Dolphin.

Q. Which side of the river is that?

A. West side of the river.

Q. What became of your barges?

A. They drifted on down below Post Office Bar, Lower.

Q. That is on the west side? [37]

A. On the west side. The wind carried them down and across. The current carried them down and the wind carried them across.

Q. That is to say, the collision occurred on the east side of the river opposite Post Office Bar, Rear? A. Right.

Q. And when the barges came to a stop following the collision, where do you say they were?

A. They were below Post Office Lower light.

(Testimony of Wm. A. Reed.)

Q. Post Office Lower light? A. Yes, sir.

Q. That is over on the west side, the place to which I am now pointing? A. Yes, sir.

Q. There was no motive power to propel those barges after the collision occurred; is that right?

A. No, sir; that is right.

The Court: We will take fifteen minutes.

(Whereupon at 9:50 a recess was taken.)

(The last question was read by the reporter.)

Mr. Young: Q. By what method were these barges picked up following the accident?

A. The tug Cruiser came in shortly after the accident and asked if there was anything he could do and we told him he could pick the barges up and take them up to Terminal 4.

Q. Did the tug Cruiser pick up the barges? [38]

A. She did.

Q. Where was your boat following the accident?

A. I backed around and went over to the west shore and tied up to what was known as Silo Dolphin.

Q. Why did you do that?

A. There was an oil line broke leading to the burner in the boiler.

Q. And was that repaired while you were over by the Silo Dolphin? A. It was.

Q. What became of the Pennsylvanian?

A. She drifted on down and went out of the mouth of the Willamette the last I seen of her at that time.

(Testimony of Wm. A. Reed.)

Q. Now, following the accident when did you first have an opportunity to observe the lights again on the barges?

A. Well, at Terminal 4 all of the lights were just as we placed them on the barges.

Q. About what time in the night was that?

A. Oh, I should judge along about 3, between 3 and 4 o'clock.

Q. That is, the Cruiser had taken the barges to Terminal No. 4? A. Yes, sir.

Q. And you went there yourself in the Barry "K"? A. Yes, sir, eventually.

Q. And do I understand the lights were burning the same at that time as they had been before the accident? A. They were.

Q. Were they in the same positions on the barges? [39] A. Yes, sir.

Q. As you have already described?

A. Yes, sir.

Q. Captain, will you state whether or not based upon your experience on the night of this accident it was either safe or practicable for you to have operated the Barry "K" with her tow up the right-hand side of that channel past Post Office Bar?

A. No, it was not safe and practicable.

Q. Will you state to the Court why, after you gave your first danger signal to the Pennsylvanian, you did not stop your engines and throw them in reverse immediately?

A. Well, I was giving two whistles first, the

(Testimony of Wm. A. Reed.)

danger whistle, and another two whistles, which I gave several, figuring any moment he would understand the two whistles, he would swing back into his regular course and proceed on down to my star-board side.

Q. Had he done so, would there have been any reason for a collision? A. No, sir.

Q. And proceeding over toward the east side, where were you going with reference to the channel?

A. I was going directly away from the channel, to the east side of the channel.

Q. And in that particular area of the river, could heavy-draft vessels travel?

A. They did right at that place, but not farther where I was [40] trying to get.

Mr. Young: That is all.

Cross Examination

By Mr. Wood:

Q. You didn't, however, Captain Reed, get to the place that you aimed to get to, to be safe, did you? A. Yes, I would.

Q. I say you didn't, did you?

A. No, I didn't.

Q. Your object was to get into the shoal water where you would be entirely out of the ships' deep channel, wasn't it? A. Yes, sir.

Q. And you did not succeed in getting there, did you? A. No, sir.

Q. I will stand over here, because I want you

(Testimony of Wm. A. Reed.)

to talk toward the Court. When you gave your two-blast signal, you understood, did you not, that that was only an invitation on your part to the other ship to pass starboard to starboard?

A. Well, I would say a request.

Q. A request, yes. And you know, don't you, that under the rules the other ship doesn't have to accede to that request? A. No, sir.

Q. And you know that unless she does respond to your invitation and accede to your request, you have no right to insist on a starboard to starboard passage, have you? [41] A. Yes, sir.

Q. Is that your understanding of the rules?

A. Yes, sir.

Q. You think that when you request a starboard to starboard passage with two blasts, the other ship must accede to it?

A. Yes, sir. If she doesn't, she can blow me a recall or a danger whistle.

Q. Well, now, in testifying before the United States Inspectors, you admitted, didn't you, that when you gave the two-blast signal for a starboard passage, it was up to you to keep out of the way of the other ship, didn't you? A. Yes, sir.

Q. And you were going to keep out of her way by getting over in the shoal water where she could not reach you? A. Right.

Q. That was your plan? A. Yes, sir.

Q. But you did not succeed in doing that, did you? A. No, sir.

(Testimony of Wm. A. Reed.)

Q. In other words, you did not fulfill the obligation which you had undertaken to keep out of her way, did you?

A. I didn't get it fulfilled.

Q. No. Now, just to review briefly your course and conduct, when you came up the left-hand side and sighted the Pennsylvanian, you blew your two blasts and you got one in response? [42]

A. Yes, sir.

Q. At that time the ships were three to four thousand feet apart, you think?

A. Yes, sir. More—yes, sir; that is right.

Q. You were showing your red light to the Pennsylvanian? A. Yes, sir.

Q. And she was showing her green light to you?

A. Yes, sir.

Q. And when you got an answer of one blast to your two, you recognized at once that that created a situation of some doubt and danger, didn't you?

A. Yes, sir.

Q. What did you do about it?

A. I blew him a danger whistle.

Q. Of four blasts? A. Right.

Q. Now, how soon did you blow that danger whistle after you got his one blast?

A. Well, sufficient time to distinguish it from the danger whistle.

Q. Well, could you be more exact than that?

A. I couldn't say in seconds, no; eight or ten seconds.

(Testimony of Wm. A. Reed.)

Q. And did I understand you to say you thought the ships had cut down the distance between them at that time by about a thousand feet?

A. Yes, sir. [43]

Q. So that at the time you blew your first danger blast, the ships were from two to three thousand feet apart?

A. Approximate; around there.

Q. And the Pennsylvanian following the channel was swinging all the time a little bit to her starboard, making her more end-on with you, was she?

A. Yes, sir.

Q. In other words, she was continuing to swing into that part of the river which you had requested by your two blasts?

A. Yes, sir.

Q. In other words, the situation as it appeared to you was continuing to get more dangerous?

A. Yes, sir.

Q. But you did not at that time stop your engines, did you?

A. Not at that moment.

Q. No. You continued at full speed ahead?

A. Yes, sir.

Q. Did you not?

A. Yes, sir.

Q. Then you blew a second two blasts, didn't you?

A. Yes, sir.

Q. Still insisting on what we will call your request to pass starboard to starboard?

A. Yes, sir.

Q. And still you kept full speed ahead? [44]

(Testimony of Wm. A. Reed.)

A. Yes, sir.

Q. And I think you said you got no response from the *Pennsylvanian*? A. Right.

Q. And you continued full speed ahead until you blew a third two blasts, didn't you?

A. Yes, sir.

Q. How far apart do you think the vessels were when you blew the third two blasts?

A. Oh, a thousand feet or a little better.

Q. Then the vessels had narrowed the distance between them from the first whistles to your third two blasts—they had narrowed the distance by two or three thousand feet, hadn't they?

A. Yes, sir.

Q. And still you went full speed ahead up to that time? A. Up to that time.

Q. And heading, as I believe you said, more—trying to reach the shoal water? A. Right.

Q. On the east bank? A. Yes, sir.

Q. Now, why did you persist in that course and in that full-speed-ahead action through such a long time when you realized there was danger?

A. Well, he was coming directly head-on, kept coming, and I [45] thought any moment he would hear my two whistles and pull back into his regular course at that point.

Q. But he had indicated to you that he wanted to obey the rule and take the right-hand side; he had indicated that by the one whistle, had he not?

A. Yes, but no other indications.

(Testimony of Wm. A. Reed.)

Q. Well, he had never indicated a contrary indication, had he? A. No.

Q. Well, by what process of reasoning did you think he would swing a heavy ocean-going ship to that ship's port contrary to the course he had indicated?

A. Because he was clear out of the regular course which ships go at that point—travel at that point.

Q. He was right in the regular course required by Article XXV, wasn't he?

A. What article?

Q. Do you know Article XXV of the Inland Rules; it is called the "Narrow Channel Rule"?

A. Oh, yes.

Q. What does it say?

A. It says, "Keep that far to the channel that lies to your starboard."

Q. Yes. That is what the Pennsylvanian was doing, was it not? A. Yes.

Q. And under the rule that is what he had to do, wasn't it? [46] A. Yes.

Q. Well, if under the rule that is what he had to do, why did you think he was going to depart from the rule?

A. Because it is not safe and practical for a tow boat to go up on the west side of the channel at that point.

Q. Well, Captain Reed, if it was safe and practicable for the Pennsylvanian to keep to her own

(Testimony of Wm. A. Reed.)

starboard side of the channel, she had to do it, didn't she?

A. If it was safe and practical, yes.

Q. I will ask you this: It was perfectly safe and practicable for the Pennsylvanian to keep to her starboard side, wasn't it? A. Yes.

Q. And the rule says when it is safe and practicable to do so, a ship shall keep to her own starboard side, doesn't it? A. Yes.

Q. It was mandatory on her to keep to her starboard side, wasn't it? A. Yes.

Q. She had to do it, didn't she?

A. No, she didn't have to do it.

Q. I don't want to use words that confuse you; you evidently don't understand what "mandatory" means. Wasn't the Pennsylvanian obliged under the rule to keep to her own right?

A. According to rules, yes.

Q. But according to custom, not?

A. No. [47]

Q. That is what you mean, do you?

A. That is right.

Q. Did you say that you had been navigating the river here for twenty-two or twenty-three years?

A. Yes, sir.

Q. As a pilot?

A. Pilot and Master.

Q. Pilot and Master. And you have not merely held license that long, but you have actually been a pilot and Master for that long?

(Testimony of Wm. A. Reed.)

A. Yes, sir.

Q. Operating river and steam boats?

A. Yes, sir.

Q. You have never acted as pilot on ocean-going ships, have you? A. No, sir.

Q. You are purely a tow boat man?

A. Yes, sir.

Q. Now, do you know the history of this Post Office Bar channel; do you know how wide it used to be?

A. I know it used to be very narrow.

Q. Very narrow? A. Yes, sir.

Q. Do you know that in the old days—I will say twenty years ago—when the Post Office Bar ship channel was only about 250 to 300 feet wide? [48]

A. I presume that is right.

Q. Well, you know that as a fact, don't you?

A. Well, I never noticed charts at that time, though. I never studied the charts.

Q. And do you know that even in those days when it was only 250 to 300 feet wide, that large ocean-going steamships always passed there, when meeting port to port?

A. I presume they did.

Q. You don't know that?

A. No. I was not on this upper river at that time.

Q. When did you begin to navigate the upper river?

A. Along about '20—from '20 to '22.

(Testimony of Wm. A. Reed.)

Q. Well, from your navigation date when you commenced to navigate the upper river, you know that ocean-going, big steamers always pass in this vicinity port to port, don't you? A. Yes, sir.

Q. They obey the rule, don't they?

A. Yes, sir.

Q. And they have been doing that for the last twenty years? A. Yes, sir.

Q. That you know of? A. Right.

Q. Do you know that that channel at that point has been further widened in the last two years until now it is 800 feet wide clear across, 30 feet of water? [49]

A. No, I didn't know it was 800 feet.

Q. You didn't know that? A. No, sir.

Q. How wide did you suppose it was?

A. 700 feet.

Q. Well, that is not a great difference. You admit it is 700 feet? A. Yes.

Q. But you didn't know it was 800 feet wide?

A. No, sir.

Q. Is it more convenient and easier for the tugs and tows to come up on the east side of the river?

A. Yes, sir.

Q. It is slacker water there, isn't it?

A. When there is a winter freshet, there is slacker water there, yes.

Q. Well, at this time in February, when you had this collision, was it slacker water over there?

A. Well, there was very little difference.

(Testimony of Wm. A. Reed.)

Q. Very little difference. How shoal is the water over there outside of the 30-foot channel?

A. Oh, it jumps up to 21, 12, and up, I judge, right up to nothing.

Q. And how wide is the space between the 30-foot contour and the river bank on that side? [50]

A. Oh, two or three hundred feet.

Q. That is the water you were trying to get into but did not get into, is it? A. Yes, sir.

Q. And you say that on this night the water over there was not any slacker than it was in the main ship channel? A. Not much difference.

Q. Well, then at least there wasn't much current; is that what— A. That is right.

Q. How much current would you say there was?

A. I wouldn't say there was much over a mile; right around there somewheres close.

Q. By that you mean a mile an hour?

A. Yes.

Q. And was that current downstream?

A. It was.

Q. What? A. It was.

Q. Is it easier to control a ship, a tow boat, when you are stemming the current than when you are going with it? A. Yes, sir.

Q. Why is that?

A. Well, you are working against the current; you can hold her better with your rudder.

Q. The current gives you better steerageway when it is against you, [51] doesn't it?

(Testimony of Wm. A. Reed.)

A. Yes, sir.

Q. And gives you better control of your vessel?

A. Yes, sir.

Q. So that such advantage as there may have been in this current was with you rather than with the Pennsylvanian, wasn't it?

A. Yes, sir.

Q. You have said that the easterly breeze, which you contend was a handicap to you, was blowing from the east, you think, ten or fifteen miles an hour?

A. Around that; it is pretty hard to judge.

Q. I know it is and I was wondering what means you had, if any, of estimating that?

A. Well, the bearing on my tow, the way she was sliding.

Q. When did you notice her begin to slide?

A. Coming into the mouth of the Willamette.

Q. Is that the only way you had of estimating the force of the wind? A. Yes.

Q. How high are those willows on the bank that you say gave you some protection from the wind?

A. Oh, they would run up there twenty feet probably in some places.

Q. You mean the willows themselves?

A. That is the general height of the willows and cottonwoods above [52] the water.

Q. Above the water? A. Above the water.

Q. Do you remember testifying before the Inspectors that they are about six or eight feet high? A. Above the dike.

(Testimony of Wm. A. Reed.)

Q. That is what you meant? A. Yes.

Q. But perhaps twenty feet above the water?

A. Yes, around there.

Q. How far away from those willows were you?

A. Oh, I was three or four hundred feet—
three hundred feet.

Q. And if you had been over in your own right-hand side of the channel, how far would you have been from them?

A. Well, I would have been about a thousand to twelve hundred and thirteen hundred feet.

Q. Do you think that would make much difference in the protection they would give you?

A. Absolutely.

Q. Is your Barry "K" a boat of good power?

A. Yes, sir.

Q. Do you know what horsepower she has?

A. Right close to 500 horse; approximately right around there.

Q. She is a good strong tug, is she?

A. A good tug, yes. [53]

Q. Isn't she or is she a little better than most of them on the river?

A. I wouldn't say most of them, no; about average.

Q. She is perfectly capable of handling her tows in any ordinary circumstances, is she?

A. Yes, sir.

Q. What? A. Yes, sir.

Q. You said that in order to go up the right-

(Testimony of Wm. A. Reed.)

hand side of the river there under the conditions prevailing that night you would have had to have the bow of your foremost barge about 200 feet out into the channel, didn't you? A. Yes, sir.

Q. And you said in that position she would be safe, didn't you? A. Yes.

Q. Now, how much distance would that have left between the stern of your Barry "K" and the dike on your right-hand side?

A. Well, that would have left her a safe distance; forty or fifty feet with the wind blowing.

Q. So that if you had elected to come up on that side, keeping the stern of your boat 30 or 40 feet away from the dike and your bow 200 feet out in the channel, you would have been safe in doing that? A. Yes, sir.

Q. With a tug of your power and that tug, wouldn't you? [54] A. Yes, sir.

Q. Would you mind speaking a little louder? I am not very acute of hearing myself, and I want us all to hear this.

Mr. Young: If the Court please, I might suggest both counsel and witness speak louder.

Mr. Wood: I would be glad to. Sometimes I have been accused of shouting at a witness and I don't want that accusation made of me.

Mr. Young: As long as you are reasonable about it we won't make the accusation.

Mr. Wood: Q. Captain Reed, if, then, you had been in that position, there would still have been

(Testimony of Wm. A. Reed.)

600 feet of deep water for the Pennsylvanian to come down in, would there not? A. Yes, sir.

Q. How close do you have to be with your tug and tows to a passing steamer to feel any effect of her displacement wave as she goes by?

A. Her displacement wave?

Q. Yes.

A. God, you can be sometimes a half or three-quarters of a mile away from her and still feel it.

Q. You can? A. Yes.

Q. Well, that depends, of course, I suppose, on the size of the steamer and how much water she is drawing and her speed, doesn't [55] it?

A. Yes, sir.

Q. Is it the custom for most of these steamers to slow down if they are passing you in such a way as not to throw any displacement wave that is injurious?

A. I don't know whether it is a custom or not. Some do and some don't.

Q. Do you know what the practice of the American-Hawaiian steamers is in that regard?

A. I know what they have done in regards to that.

Q. You don't know what their practice is?

A. No, sir.

Q. You also spoke of the kick water from the steamer's propeller? A. Yes, sir.

Q. Having some influence on your boat if you passed on the starboard side? A. Yes, sir.

(Testimony of Wm. A. Reed.)

Q. Now, the kick water from the propeller means the water that the propeller throws directly back of it as it drives the ship ahead through the water, doesn't it? A. Right.

Q. And if the vessel is going straight ahead that kick water is directly astern, is it not?

A. It is.

Q. So that if you passed a steamer on parallel courses, you [56] wouldn't feel the kick water, would you? A. No.

Q. Now, furthermore, the direction of the kick water from the steamer's stern is influenced by the position of the ship's rudder, is it not?

A. Yes, sir.

Q. In other words——

A. To some extent.

Q. Well, to a considerable extent, is it not?

A. It is considerable.

Q. Yes. Now, if the rudder is put to the right, it deflects the kick water off in the right-hand direction, does it not?

A. Somewhat, yes.

Q. Therefore, the Pennsylvanian coming down this channel and putting her rudder to the right, as she would have to do to make the turn here, she would deflect her kick water away from you if you had been coming up on the right-hand side, would she not?

A. She would deflect about half of it.

Q. How close do you have to be to a ship to get the kick water?

(Testimony of Wm. A. Reed.)

A. At that position you would be close enough to feel it.

Q. I asked you how close?

A. Oh, 100 or 150 feet.

Q. You think you could detect it then?

A. Yes, sir, I believe I could.

Q. Do you mean that even though the ship had her rudder to the [57] right, you would feel it?

A. Yes, sir.

Q. How could you?

A. Well, the rudder only deflects about half of her kick water.

Q. But the other half is going directly astern, isn't it?

A. Yes, directly astern; she is on the swing there all the time.

Q. An easy swing, is it not?

A. Yes, an easy swing.

Q. Now, would you mind at my request making a few marks on this chart showing where these different things occurred? Just one little cross mark where you were when you first sighted the Pennsylvanian.

A. Approximately right there.

Mr. Wood: May I mark that, counsel, "Barry 'K' at first sight"?

Mr. Young: That is okey.

Mr. Wood: According to Reed.

Mr. Young: Yes.

Mr. Wood: "Barry 'K', Reed, first sight."

(Testimony of Wm. A. Reed.)

Mr. Young: Satisfactory.

Mr. Wood: Q. Now, Mr. Reed, would you mark where you think the Pennsylvanian was at the same time?

A. This is approximate.

Q. Would it help you, Captain Reed—just a moment. Would it help you to extend that Post Office Bar range here on this chart?

A. I will make it just approximate— [58]

Mr. Young: I would suggest that that be done, because this particular diagram does not show the actual range itself, though it does show the position of the—

Mr. Wood: If everybody wants it done, I will.

Mr. Young: I think so, please.

The Witness: It would be a help all right.

Mr. Wood: I have drawn the range and marked it "P. O. Range."

Q. Now, Captain Reed, will you mark, please, where you think the Pennsylvanian was at the first sight?

A. Approximately as near as I can tell, she was right about in here.

Q. Make a little mark, on the range.

A. Yes, sir.

Mr. Wood: I have marked that "Pennsylvanian, Reed, first sight."

Q. Now, would you mark where you think the collision occurred?

A. Right around in here. It may vary a little bit this way.

(Testimony of Wm. A. Reed.)

Q. That is as close as you can put it, is it?

A. Yes.

Mr. Wood: I have marked that "Collision, Reed."

A. (Continuing): A little bit more this way.

Mr. Wood: Q. Would you like to change it?

A. No.

Q. Now, Captain Reed, would you mark, please, the position where the barge had drifted to after the collision—I will ask you [59] further, did they all drift together or separated?

A. No, they were separated.

Q. You spoke of one, I believe, having drifted downstream and across——

A. They both drifted down practically together, a short distance of each other.

Q. Were they torn apart? A. Yes.

Q. So their lines didn't hold them together?

A. Oh, no.

Q. Well, were they so close together that you could mark them with one mark on the chart where they were? A. Well, when?

Q. When they drifted.

A. When she was picked up?

Q. At this place you said they drifted to.

A. Approximate—I wasn't down there at the time of drifting—but where I could see from where I was, right down along this dike, somewhere below Post Office Lower.

Q. That is as near as you can mark the position

(Testimony of Wm. A. Reed.)

of the barges when they reached the end of their drift? A. Yes.

Mr. Wood: I have written there, "Barges at end of their drift after collision, Reed."

Q. I will ask you to make one more mark on there for me, [60] Captain Reed. Just mark up there the direction of the wind?

A. The wind was blowing from?

Q. Yes, wind direction; make a line and put an arrow on one end of it.

(The witness made a mark on the exhibit.)

Mr. Wood: I have marked that "Wind direction, Reed."

Q. Substantially from the east, it was?

A. Yes, an easterly wind.

Q. Were the barges damaged any by coming up against this dike after they had drifted there?

A. No, not that I know of.

Q. But this position that you have marked here, were they resting against the dike?

A. I don't know. I couldn't say.

Q. You didn't pick them up?

A. No, I didn't pick them up.

Q. Would that be the natural place for them to come up against? A. Yes.

Q. How far down the river does that dike extend? I don't like to recall you from the stand again.

A. That dike will extend down very closely to what is known as Gillihan's light.

(Testimony of Wm. A. Reed.)

Q. Away down here?

A. Yes. Originally it went right on through.

Q. Is the dike marked on this engineer's chart? Let's look at [61] the legend. I don't see that it is marked.

A. It is a broken dike; it is broken up here again. I think right about right in there is where the end of that dike comes, and around close to Gillihan's light.

Q. I think you said in your testimony that the barges at the end of their drift were tied up at the Silo Dolphin? A. No, I did not.

Q. What did you say about that?

A. I tied up there after the collision.

Q. Oh, you tied up there. Is that dike that you speak of one that has been put there by the United States Engineers? A. Yes, sir.

Q. And they are in charge of the navigation of the river, are they not?

A. I presume they are.

Q. Well, you know they are?

A. Yes, I know they are.

Q. You know they are in charge of river and harbor improvements? A. Yes, sir.

Q. And you don't suggest, do you, that the United States Engineers would put a dike there that would be a hazard to navigation? A. No.

Q. That dike is not in any way a hazard to navigation, is it? A. Some navigation, yes.

Q. Well, then, to come back to what I asked you

(Testimony of Wm. A. Reed.)

before, do you [62] think that the United States engineers, the officers in charge of the river and harbor improvements, would build a dike that is a hazard to navigation?

Mr. Young: Just a moment, if the Court please. I object to that question upon the ground that counsel is asking this witness to state what the opinion of the United States engineers might be; it is an entirely irrelevant matter.

Mr. Wood: I think it tests his experience as a pilot, his knowledge of navigation and all those things.

The Court: He may answer it. Tell all you know about the dike.

A. Yes, they do put dikes in this river that is a menace to river navigation, that is, tow boats, log boats, and barges.

Mr. Wood: Q. That answer of yours suggests my asking you this: Is there some feeling here on the river between the tow boats and the ocean steamers? A. No.

Q. I would like to ask you about these lights, these lanterns you had on there. A. Yes, sir.

Q. Are you familiar with the steamboat inspectors' regulations about lights on barges and scows?

A. Yes.

Q. Well, do you say that these barges or scows, whichever you call them, were lighted in accordance with the regulations? [63] A. Yes.

(Testimony of Wm. A. Reed.)

Q. I will show you, Captain Reed, Libellant's Exhibit 7; that is a photograph of your boat and barges as they were made up on the night of the collision, isn't it? A. Yes, sir.

Q. Will you make little cross marks on that photograph in pen and ink? I think that will mark best on the photograph. Just make little crosses showing whereabouts on the barges these coal oil lanterns were placed. (The witness marked on the exhibit.) It is true, isn't it, that coal oil lanterns smoke up quite easily? A. Oh, yes.

Q. Their wicks have to be trimmed properly to avoid smudging the glass? A. Yes, sir.

Q. And any carelessness in that regard will dim the light, won't it? A. Right.

Q. Do you want the Court to believe that this lantern which has been put in evidence here as an exhibit is a true sample of the lights that were on those barges that night? A. Yes, sir.

Q. And that they were as clean as this glass is?

A. Yes, sir.

Q. When did you last see them?

A. I last seen them when we took ahoid of the barges at Terminal 4. [64]

Q. After the collision?

A. After the collision.

Q. And you say they were not smudged or smoky at that time?

A. They were not smudged or smoky.

Q. How long had they been burning?

(Testimony of Wm. A. Reed.)

A. Well, they were put on there, I presume, along about 10:30—10 or 10:30 the night of January 31 and that was February 1 about 4 or 5 A. M., along in there.

Q. What was the name of the man whose duty it was to attend them? A. John Kelly.

Q. Is he what you call your watchman?

A. Yes.

Q. Is he the man that was in the pilot house with you just before the collision?

A. Yes, sir.

Q. I don't remember whether you testified to it here in the courtroom or whether I am remembering some testimony before the Inspectors, but did you say you were on your way to the Weidler dock? A. That was our destination, yes.

Q. And the Weidler dock is on the west side of the Willamette River? A. Yes, sir.

Q. Below the Broadway Bridge?

A. Yes, sir. [65]

Q. You were going to pick up another barge at the West Oregon mill on your way up the river, weren't you? A. Yes, sir.

Q. What kind of a barge was that?

A. A barge load of hog fuel.

Q. A barge load of hog fuel? A. Right.

Q. Is that similar in size and type to these barges?

A. Practically the same dimensions, only she has a bin on her instead of a house.

(Testimony of Wm. A. Reed.)

Q. Well, was she loaded with sawdust?

A. Oh, yes.

Q. Would that bin and pile of sawdust be approximately as high or higher than the houses on these barges here?

A. Higher than the houses on the barges.

Q. How much higher?

A. Oh, six to ten feet.

Q. Six to ten feet higher. And where were you going to lash that barge?

A. I was going to take it right on the star-board side of barge 22.

Q. And where were you going to deliver that barge?

A. Eventually it would have went to West Linn.

Q. Where is that? A. Oregon City.

Q. Would you have taken it up there? [66]

A. I presume I would, if I had been on the boat.

Q. Do you often take loaded barges with the "Barry K" up to Oregon City?

A. Yes, sir.

Q. What are they loaded with, sawdust?

A. Yes, sir.

Q. How many do you take on one load?

A. One barge.

Q. One barge?

A. Yes, sir. And an empty paper barge.

Q. You mean you take two barges up?

A. Oh, yes.

(Testimony of Wm. A. Reed.)

Q. Three?

A. I have, with the Robert Young.

Q. With what? A. The Robert Young.

Q. Is that a more powerful boat than this?

A. No.

Q. Not so powerful? A. No.

Q. Now, in taking two or three barges up through the harbor here, you of course have to go through all of the bridges, don't you?

A. Yes, sir.

Q. And how wide is the side of the draw span through which you go? [67]

A. How wide is the draw span?

Q. Yes.

A. Oh, about a hundred feet would be the narrowest one.

Q. Which one is that? A. Morrison.

Q. And when you go up through the harbor here, do you keep to the right-hand side?

A. Yes, sir.

Q. You obey the narrow channel rule, do you, coming through Portland here? A. Yes, sir.

Q. Do you do that all the way up to Oregon City? A. No, sir.

Q. You don't, however, meet any steamers after you get above Portland, do you?

A. I have, yes.

Q. Ocean steamers?

A. Not ocean, no, sir.

Q. That is what I meant. Are there any bends

(Testimony of Wm. A. Reed.)

in the Willamette River that you have to make going through Portland here? A. Yes, sir.

Q. Where are they?

A. It bends practically all the time; the Steel Bridge, the Burnside, back to the Morrison and over to Hawthorne, right and left bends. [68]

Q. How? A. Right and left bends.

Q. How do they compare in degrees of curvature with this curve here at Post Office Bar?

A. Some of them are a little bit more; some of them are not quite so much.

Q. Nevertheless, you bring your barges up, keeping on the right-hand side, don't you?

A. Yes, sir.

Q. You testified that at the time of the collision the "Barry K" and her barges were almost, if not quite, stopped? A. Yes, sir.

Q. And how far had she run in distance from the time you stopped going full speed ahead and reversed your engines, to the collision? In other words, I want to know how long it took you to reverse.

A. Oh, I don't know. Three-quarters to a minute.

Q. I didn't ask you the question right. I meant in distance.

A. It is pretty hard to say; a little over the length of the "Barry K" and the barges.

Q. That would be about 300 feet?

A. A couple or three hundred feet.

(Testimony of Wm. A. Reed.)

Q. You mean that you feel that going at six miles an hour your tug was capable of bringing her practically to a standstill in 300 feet? [69]

A. Right close to it.

Q. You are not now employed by the Western Transportation Company, are you?

A. Yes, sir.

Q. I thought you were employed by the Knapp-ton Towboat Company.

A. I was for a short duration.

Q. But you are now re-employed by the Western Transportation? A. Yes, sir.

Q. Well, when you were employed by the Knappton Towboat Company, I just wondered whether they gave you any instructions about passing ships in the Post Office Bar channel?

A. No, sir.

Q. Do you know that the Knappton tugs with tows coming up that channel—I don't know whether they always do, but I know on occasion they pass to the right—pass steamers port to port; do you know that?

Mr. Young: I object to counsel testifying. He has stated for the record what he knows to be the fact. I object to that question.

Mr. Wood: I will take that back. We can prove that with a witness.

Mr. Young: I presume the Court will eradicate from its mind the statement so made by counsel?

Mr. Wood: Q. Do you know, Captain Reed,

(Testimony of Wm. A. Reed.)

that the Knappton tow boats with tows have at least since this collision been passing steamers there on Post Office Bar port to port? [70]

A. No, sir, I do not know it.

Q. Have you ever been going down the river with your tow boat and a tow and met tow boats coming up?

A. Yes, sir.

Q. At this place?

A. Yes, sir.

Q. And if tow boats with tows alongside met at this place in Post Office Bar, how do they pass?

A. Why, they pass either side; sometimes port to port, sometimes starboard to starboard; it all depends on the position of the heaviest boat.

Q. But if a tow boat coming up, as you were, meets another tow boat coming down, each with tows, they generally pass there port to port, don't they?

A. Not generally, no.

Q. Well, give us an idea of what proportion of the time they pass one way and what proportion the other.

A. I would say it is as liable to be one way as the other.

Q. About half and half?

A. That is what I would say.

Q. But they don't pass starboard to starboard there, unless they agree on it, do they?

A. No, sir.

Mr. Wood: If the Court will let me consult my advisors.

Q. It is just suggested that I ask you about

(Testimony of Wm. A. Reed.)

that forward range [71] light of yours, Captain. You have already testified that it was out because it wouldn't show with the barge ahead of it?

A. Yes, sir.

Q. In other words, that forward range light is supposed to be lit and on the bow of the "Barry K", is it not? A. Yes.

Q. Do the regulations require that?

A. Yes, sir.

Q. But you did not have it lit?

A. No, sir.

Q. For the reasons you have explained?

A. Yes, sir.

Q. What is the purpose of that range light?

A. To show the fore part of your vessel.

Q. Is it also to show an approaching ship the angle at which your vessel was lying—

A. It would be very hard to on some boats. No; I would say no.

Q. That is its object, isn't it?

A. No, I don't think so.

Q. Aren't the range lights of a boat supposed to enable the other ship by lining them up or observing how open they are to tell the angle of approach of the other ship?

A. I wouldn't say so.

Mr. Wood: That is all.

(Testimony of Wm. A. Reed.)

Redirect Examination [72]

By Mr. Young:

Q. Captain, counsel inquired of you as to whether or not in going up through the Portland harbor with your tow boat you keep to the right-hand side of the channel. I will ask you whether or not in the event you are coming up through the Portland harbor and you are meeting a large ocean-going vessel, the practice may vary from time to time with the ship itself as to which side you pass on?

Mr. Wood: Now, I object to counsel testifying.

Mr. Young: I have asked it whether or not question form, your Honor.

The Court: He may answer.

Mr. Young: Q. Did you get the question, Captain Reed?

A. Well, what you want to know, if it is uniform?

Q. Yes. A. No, it is not.

Q. Now, will you explain your answer.

A. Because a ship will probably be coming out of the dock approaching, say, a ship leaving Terminal 1, which is on the west shore below the Broadway Bridge; she would be approaching upstream, she wouldn't be directly in the middle of the river, and say there was a tow boat coming down over through the steel bridge and she wanted to go into the Weidler Dock, which the ship would

(Testimony of Wm. A. Reed.)

probably be in the Broadway Bridge at the time she would be passing, she would make a starboard passage. Also I would say the Morrison Street [73] Bridge it is customary for ships to come down to the west side, use the west side of that bridge altogether.

Q. You mean through the west side of the draw?

A. The west side of the draw, yes.

Q. Suppose that a tow boat is going upstream and an ocean steamer coming downstream, what is the practice then?

A. That is what I was trying to illustrate, the ocean steamer coming down and a tow boat going up and naturally instead of waiting till that ship got through so she could pass port to port, why she would go up on the east side of the bridge, making a starboard passing to that ship.

Q. You say she would go up the east side?

A. The tow boat would be, being the ship coming down on the west side of the draw.

Q. Captain, with respect to this custom to which you have testified in and about Post Office Bar of river boats going up on the left-hand side of the channel, through what distance does that custom obtain?

A. Well, I should say from Post Office entrance light practically up to abreast of the Willamette or Multnomah channel.

Q. And then as the river boat gets upstream

(Testimony of Wm. A. Reed.)

beyond the Multnomah channel, what does the river boat then do?

A. Well, she will proceed right on up the east shore, provided she didn't go to West Oregon mill and pick up a barge, which I did in this case. [74]

Q. Now, counsel has drawn on the engineer's map an extension of the Post Office range course. Will you tell the Court in the case of a ship, an ocean-going ship proceeding down the Willamette and following the Post Office range, how far does that ship ordinarily proceed over to the west shore before it leaves the range to continue on downstream?

Q. Well, I am not a ship pilot, don't know really where they start to swinging off, but occasionally they are in within 300 feet, I would say, abreast of the rear light of the Post Office range by the time they get down there.

Q. Now, in the case of the steamer Pennsylvanian, how far would you say the Pennsylvanian proceeded toward the west shore of the Willamette River along Post Office range before she veered off to starboard?

Mr. Wood: Pardon me. I am going to object to that question, your Honor, because I think the witness has already testified—I think I am right in this—that he didn't know that.

The Court: Well, we will see. He may answer it.

A. Well, it is pretty hard to tell up there at

(Testimony of Wm. A. Reed.)

the distance where she was at, but she was coming down on the range; I could see that, and where she started to swing was shortly after I——

The Court: Q. Anyhow your position is you expected her to stay on the range longer than she did? A. Yes, absolutely.

Mr. Young: Q. Would it be possible for you on this diagram [75] to indicate approximately the place where the Pennsylvanian left the range?

The Court: He says he doesn't know.

A. It is pretty hard.

Mr. Young: Q. Very well. Counsel asked you whether or not ocean-going ships in meeting river tow boats as a matter of practice slow down and he asked you that practice with respect to the American-Hawaiian ships and in giving your answer I think you said you did not know the practice but you said that you know what they have done.

The Court: We are not interested in that, because he didn't know whose ship this was until after the time of the collision.

Mr. Young: If the Court please, it might have been the American-Hawaiian so far as he did know it.

The Court: I think that is going too far afield.

Mr. Young: Now, counsel——

The Court: I got the impression he was going to say something uncomplimentary to them.

Mr. Young: Something uncomplimentary to the American-Hawaiian ships? I don't know what he was going to say, I am sure.

(Testimony of Wm. A. Reed.)

The Court: I think you have a pretty good idea.

Mr. Young: Perhaps they have something uncomplimentary coming to them; I don't know. They may not.

Q. Now, do you know what the approximate length of the *Pennsylvanian* was?

A. No, I really don't know. She is better than 300 feet; I [76] know that.

Q. Yes. A. I couldn't say.

Q. Does the length of the ocean——

Mr. Wood: Excuse me a moment, counsel. If it will assist you any, I think the *Pennsylvanian* was 407 feet long.

Mr. Vaux: 430 over-all.

Mr. Young: Q. Counsel has just stated that the *Pennsylvanian* is 430 over-all. Now, Captain, in determining the amount of clearance which is safe between the river boat going upstream and passing the ocean-going ship and the ocean-going ship going downstream, does the length of the ocean-going ship enter into the figure? A. Why, yes.

Q. And why?

A. Well, a longer boat would take a slower bend; you would have to give her more rudder to make her swing faster; a shorter boat would swing a whole lot faster.

Q. If the ocean-going boat is longer, does that increase the distance which you need to allow between the passing ships?

A. Well, I really don't know about an ocean

(Testimony of Wm. A. Reed.)

boat. I really couldn't say that, because I have had nothing to do with them.

Q. In response to a question put by counsel, you testified that the Pennsylvanian in coming downstream could safely keep to its starboard side. However, was that true of the Barry "K"; would [77] it be safe for it to keep to its starboard side in going upstream? A. No.

Q. Were you able to determine whether or not the Pennsylvanian ran aground at all before the collision? A. No, I couldn't determine.

Q. Do you know what the nature of the bottom of the river is on the east side, of what material it is made?

A. Well, it is sand and clay, a little clay in some spots, mostly sand. I think it is clay bank.

Q. Counsel, in quoting your words, referred to the Barry "K" as proceeding full speed ahead before the collision. When you state full speed ahead in miles per hour, what did you mean?

A. Miles per hour? About six miles.

Q. About six miles?

A. With the tow that she had.

The Court: I will tell you something, Mr. Wood, from long experience; that is the hottest place in the courtroom against that wall.

Mr. Wood: I am usually in the hottest spot when Mr. Young is against me.

Mr. Young: Thank you. You will notice I took my coat off before you took off yours, though.

(Testimony of Wm. A. Reed.)

Q. Counsel, in cross examining you, inquired as to whether the Pennsylvanian was required to keep on her right-hand side coming [78] down the stream. To what extent would that depend upon whether anybody else happened to be occupying the right-hand side?

A. Well, I don't quite get your question.

(The last question was read by the reporter.)

A. (Continuing): Well, if anybody else would be occupying that right-hand side, such as log boats, which I have seen, it would be impossible for them to go down without having an accident with some other vessel.

Q. Counsel further brought out from you on cross examination that some twenty years ago when the channel was narrower than it now is that ocean-going ships then passed port to port in the vicinity of Post Office Bar. What is the fact as to whether ocean-going ships today pass port to port at that place? A. They do.

Q. And the custom to which you refer is related to what types of ships then, the custom with regard to it being safe or practicable to use the west side of the channel?

A. Ocean vessels, I would say; it would be safer than it would for the river vessels. Is that the question?

Q. The practice as to using the left-hand side going up rather than the right-hand side is confined to the river boats; is that right?

(Testimony of Wm. A. Reed.)

A. Yes, that is right.

Mr. Young: That is all.

Recross Examination

[79]

By Mr. Wood:

Q. Captain Reed, I hope you are not getting tired.

A. I am getting hot.

Q. I only want to ask you, I think, one question. You said just now that you expected the Pennsylvanian to stay on the range longer than she did?

A. Yes.

Q. How long after you first saw her did you blow her this whistle?

A. Oh, it wasn't very long. I had a hard left rudder and Mr. Kelly had went down to see if the deckhands was up. I should judge a couple of minutes anyway.

Q. Well, was her position—I realize at once that you three or four thousand feet away can't determine her position exactly.

A. No, I wouldn't determine it exactly.

Q. But was her position as near as you can tell substantially different when you blew the whistle than it was when you marked her as "first sight"?

A. It was practically the same when I blew the whistle as when I first saw her. She was taking the same course.

Q. Then she answered that first signal of yours at once with a single blast, didn't she?

A. Yes.

(Testimony of Wm. A. Reed.)

Q. As soon as you got a single blast from her, you knew, you must have known, didn't you, that she was not going to continue on the range but was going to swing over to her right? [80]

A. Well, she might have been wanting me to keep clear on over to the right, which I wasn't in no position to get at.

Q. But, now listen, you testified that she held onto the range longer than you expected she would.

A. No, not held onto it. I said that she turned off the range quicker than I suspected her to.

Q. Excuse me; yes. Well, as soon as she blew you the one blast, you knew she was going to turn off the range, didn't you? A. No.

Q. You didn't? A. No.

Q. Wouldn't that be her duty, to get over to her right-hand side?

A. It would be to get over to the right-hand side, but if she had held her natural course she would have wanted a port passing, which I would have had to cross to ship channel to do.

Mr. Wood: All right; that is all.

Mr. Young: That is all, Captain.

The Court: Q. Captain, before you leave, were you a witness in another proceeding before me?

A. No, sir.

The Court: Step down.

A. (Continuing): Wait; I don't know. Was it S. P. & S.-Knappton Towboat Company?

The Court: No.

(Witness excused.) [81]

E. P. WILLIAMS,

produced as a witness in behalf of the Libelant,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Where do you live, please?

A. In Portland.

Q. And how long have you lived here?

A. I have lived at Portland only about——

The Court: Try to finish direct or cross before noon.

A. ——two months. In and near Portland for thirty years.

Mr. Young: Q. What is your occupation?

A. Ship pilot.

Q. Ship pilot?

A. Ship pilot; yes, sir.

Q. And are you in the employ of anyone at the present time? A. No, sir.

Q. In what field are you working at the present time? A. As a ship pilot.

Q. When you say “ship pilot,” what kind of ship do you mean? A. Ocean-going.

Q. Ocean-going? A. Ocean-going, yes.

Q. And throughout what territory do you operate? A. Portland, Astoria, Vancouver.

Q. What license do you carry? [82]

A. Master and pilot, any tonnage.

Q. And how long have you had that license?

A. I have had that license about six years.

(Testimony of E. P. Williams.)

Q. And how long have you been licensed as a master and pilot?

A. About thirty-three years, on river steamers.

Q. And during that time has your experience involved the Willamette and Columbia rivers?

A. Yes, sir.

Q. Have you operated both ocean-going ships and river boats? A. Yes, sir.

Q. To what extent have you had occasion to operate river boats?

A. Oh, about—most of my experience has been on river boats about thirty-three years.

Q. Captain, were you on board the Barry K at the time of the collision with the Pennsylvanian?

A. Yes, sir.

Q. What was your position on the ship?

A. Master.

Q. How long had you held that position?

A. On the Barry K?

Q. On the Barry K.

A. I don't just remember. I think a couple of months; something like that.

Q. Prior to that time where had you been?

A. On the steamer Claire. [83]

Q. Were you the Master of the Claire?

A. Yes, sir.

Q. How did you happen to make the change from the Claire to the Barry K?

A. The Claire was tied up for repairs.

Q. And how did it happen that you were transferred over to the Barry K?

(Testimony of E. P. Williams.)

A. How did I happen that I was tranferred?

Q. Yes. How did you happen to take over the Barry K?

A. Well, I was the oldest man in point of service, I suppose. I didn't question them on that.

Q. And when you took over the work of Master of the Barry K, who had been the pilot on her before? I mean the Master.

A. Who had been the Master?

Q. Yes. A. Reed, I believe.

Q. And that is the gentleman who just testified?

A. Yes, sir.

Q. And then when you became the Master, what was the position occupied by Captain Reed?

A. Pilot.

Q. Were you on duty at the time that the collision occurred—— A. No, sir.

Q. ——between the Barry K—you were not. Do you recall the lights having been lighted on the Barry K and her barges? [84]

A. Yes, they were all lighted when I was on watch, when I went on watch.

Q. When did you go off watch?

A. About 12:15.

Q. Will you state to the Court——

A. (Continuing): In the morning on February 1.

Q. 12:15? A. Yes.

Q. And where was the Barry K at that time?

A. The Barry K was just below the railroad bridge at Vancouver.

(Testimony of E. P. Williams.)

Q. Headed which direction?

A. Coming into Portland, downstream.

Q. Now, tell the Court what lights there were on the barges at that time.

A. Well, we had two barges in tow, number 22 and 24. There was a white light on the starboard corner, aft, and a white light forward on 22, and a white light forward on the port side of 24, and on the forward, on the aft end a white light; four lights on the barges.

Q. State whether or not those lights conformed to the practice which has existed in previous years.

A. The same lights used in all my experience of towing.

Q. And that is how many years last past?

A. Oh, my towing experience is probably fifteen years.

Q. What lights were there on the Barry K? [85]

A. The lights over the pilot house, their running lights; two lights over the pilot house, white lights.

Q. What was their purpose?

A. Range, to show her tow.

Q. What other lights?

A. There were two white lights for barge tow.

Q. Then what other lights in addition to those two white lights?

A. The running lights; a green light on the starboard side, a red light on the port side.

Q. Referring again to the barge lights, throughout what arc of the horizon did those lights shine?

(Testimony of E. P. Williams.)

A. The barge lights?

Q. Yes.

A. Well, they were on the—on the—just as to how far, how much of an arc they would show, they could be seen from each quarter.

Q. Each quarter?

A. And straight ahead.

Q. Each quarter and straight ahead?

A. Yes, sir.

Q. And the lights above the pilot house, throughout what arc of the horizon were they?

A. Visible all around the horizon.

Q. What distance could the lights on the barges be seen that particular night, would you say? [86]

A. Oh, at least two miles.

Q. What was the nature—

A. (Continuing): Probably more than two miles that night. It was a clear atmosphere that night.

Q. Was it dark?

A. A dark night, clear atmosphere.

Q. At the time that you went off watch, do I understand that the lights were all lighted and in the condition that you have just now described to the Court?

A. Yes, sir.

Q. Where was your room on the Barry K?

A. Underneath the pilot house, directly underneath.

Q. And did you go to bed as soon as you went off watch?

A. Yes, sir.

(Testimony of E. P. Williams.)

Q. At the time that you went to bed, did you notice what way the wind was blowing?

A. Well, there was a little wind out of the east or southeast.

Q. Do you know how many miles per hour it was blowing?

A. Oh, I would say twelve or fifteen.

Q. Now, did you go to sleep, do you remember?

A. I was—yes, sir; I was asleep.

Q. What do you next remember after you went to sleep following going to bed?

A. Well, I heard two blasts of the whistle.

Q. Two blasts of what whistle? [87]

A. Of the Barry K's whistle.

Q. What did that mean to you?

A. It meant a starboard passing.

Q. Was there anything surprising to you about hearing that whistle? A. No, sir.

Q. Did you at that time look out at all to see where the Barry K was? A. No, sir.

Q. Was your room, by the way, on the port or starboard side?

A. It takes up the width of the cabin on the port.

Q. The entire width? A. Yes, sir.

Q. Now, did you hear any answering whistle to these starboard passing whistles?

A. No, sir.

Q. Did you hear any more whistles following these two blasts that you have just indicated?

(Testimony of E. P. Williams.)

A. I heard the Barry K blow four short blasts.

Q. And was there any answer to that?

A. I didn't hear any answer.

Q. When you heard the four short blasts what did that indicate to you?

A. An alarm whistle.

Q. Did you do anything then?

A. Got out of bed. [88]

Q. Got out of bed. And where did you go?

A. Well, I put out on the main deck.

Q. And what did you see?

A. Well, there was a collision just before I reached—that was the deck, before I got out forward.

Q. When you got out there did you see the boat with which the Barry K had collided?

A. Yes, sir.

Q. Where was that boat?

A. She was off the starboard of us a little.

Q. What was the position of the Barry K at the time that you saw her?

A. Well, it was dark—I was a little bit confused, a person coming right out—I would say she was headed toward the east shore.

Q. The Barry K was headed toward the east shore?

A. Toward the east shore; yes, sir.

Q. What was the position of the Pennsylvanian?

A. She was laying quartering toward the east shore, or almost straight across the river.

(Testimony of E. P. Williams.)

Q. Following the time that you heard these two blasts, as you have testified, did you notice any change in the speed of the Barry K?

A. No, I didn't.

The Court: Did I understand you to say in your opening [89] statement that the pilot summoned the Captain, summoned the Master?

Mr. Young: Yes, he did a little later. Yes, your Honor, though I also stated, as the Captain has testified, the Captain, here, knew about there being a question of danger before he actually received the summons. I haven't got to the summons yet.

The Court: He is on the scene, now, though.

Mr. Young: Yes. He had just testified that he heard the——

The Court: But he was summoned, too.

Mr. Young: You heard the four danger blasts, but I haven't asked him this question about receiving the actual summons. I will ask you that now, Captain.

Q. Did you receive an actual summons to come out on the deck?

A. No, I just met the man to call me as I was on my way.

Q. You met the man? A. Yes.

Q. And who was the man?

A. The night watchman.

Q. What was his name? A. Kelly.

Q. Kelly? A. Yes.

(Testimony of E. P. Williams.)

Q. And where was he when you met him?

A. Right at the door. [90]

Q. As you were going out?

A. As I was going out.

Q. And what was Kelly doing at that time?

A. He had just come down from the pilot house.

Q. And did he at that time say anything to you about there being any danger?

A. Well, he knew that I knew there was danger. After he called me he was making his way on back to call other members of the crew, he told me.

Q. Now, when was that with reference to the time the collision occurred?

A. That was very shortly after or about the time the collision occurred.

Q. About the time of the collision?

A. About the time.

The Court: Did Captain Reed send him to call the Master and the crew?

Mr. Young: Pardon?

The Court: Did Captain Reed send Kelly to call the Master and the crew?

Mr. Young: Yes, your Honor.

The Court: You had better have him develop that on the stand.

Mr. Young: I can recall Captain Reed for that, your Honor. Yes.

Q. Well, now, at about the time of the collision, Kelly, as I understand, was talking to you. Is that correct? [91]

A. Yes, sir.

(Testimony of E. P. Williams.)

Q. Now, do you know whether the Barry K at that time had come to—was moving or standing still?

A. Well, as to that I couldn't say.

Q. And did you observe the position of the barges which had been attached to the Barry K when you came out on deck?

A. We was clear of the barges.

Q. Where were they?

A. They were—they was on,—oh, they was not so far up on the port side of us, just a short distance away.

Q. Could you at that time notice whether the lights on the barges were lighted?

A. I didn't particularly notice that. They possibly was turned more.

Q. To what did you first direct your attention upon going out on deck?

A. Damage to the hull. I first spoke to the pilot.

Q. You first spoke to the pilot?

A. Yes, sir.

Q. That is Captain Reed? A. Yes, sir.

Q. And when you refer to damage to the hull, damage to what hull?

A. Damage to the Barry K.

Q. And then what did you do?

A. On my way down to examine the hull with members of the crew. [92]

Q. And you went down into the engine room or into the lower part of the boat?

(Testimony of E. P. Williams.)

A. Went into the forward hold, first.

Q. And how long did you remain there following the accident?

A. Oh, possibly fifteen minutes, ten or fifteen minutes.

Q. Where did the Barry K go following the accident?

A. Across the river on the west side.

Q. Where did she tie up, do you remember?

A. She tied up at a dolphin just shortly below the—between the Lower Post Office light and the range light.

Q. Can you identify the place where the collision, itself, occurred?

A. Well, not so close, because I was in bed.

Q. Approximately where?

A. Well, it was almost abreast on the opposite side of the river from the Lower Post Office Range.

Q. Did you see these barges subsequent to this time, after your boat tied up?

A. Yes, I could—well, I could see the lights on the barges way down the river; yes.

Q. And did you have a close-up view of those barges at any later time?

A. At Terminal 4, after they were towed up.

Q. How were they towed up?

A. Towed up by the tug Cruiser.

Q. Now, at Terminal No. 4, what lights did you observe on the [93] barges of the Barry K at that time?

(Testimony of E. P. Williams.)

A. I saw the lights on all corners except the outside corner of 22, which was submerged.

Q. Submerged?

A. Yes, sir; the lower end, downstream end, was submerged.

Q. The downstream, would that be the rear or stern?

A. The same way. It was made fast to the tow. That is when we was hit by the ship.

Q. I mean that was the part of the barge that was next to the bow of the Barry K?

A. Yes, sir.

Q. Had there been a light on that end of the barge even before the accident?

A. Yes, sir.

Q. On which number was this again?

A. 22.

Q. I am not clear that I understand your answer. Prior to the accident what lights were there on Barge No. 22?

A. There was a light on the forward end from us, away from us, and on the starboard side and on the starboard side aft.

Q. And on the starboard side aft?

A. Yes, sir.

Q. And it was the starboard side aft light that was submerged?

A. Yes, sir.

Q. I see. How high were these lights on the barges above the [94] deck of the barges, would you say?

A. Oh, about five or six feet, between five and six feet.

(Testimony of E. P. Williams.)

Q. And were they all a uniform height above the level of the respective decks?

A. Yes, sir.

Mr. Young: You may cross examine.

The Court: Now, call Captain Reed and let's be sure to finish with him on that point.

(Witness withdrawn.) [95]

WM. A. REED,

produced as a witness in behalf of the Libelant, was recalled to the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Young:

Q. Captain Reed, at any time prior to the collision did you instruct anyone to call the Master or members of the crew? A. Yes, sir.

Q. Who? A. Mr. Kelly.

Q. And who was Mr. Kelly?

A. The watchman.

Q. Where had Mr. Kelly been stationed prior to the accident?

A. He was in the pilot house a short time before and he came right back and stood forward at the pilot house down to the deck.

Q. Where was he in the meantime?

A. Back to see if the deckhands were up to pick up that barge at West Linn.

(Testimony of Wm. A. Reed.)

Q. At where?

A. To see if they were ready to pick up the barge to West Oregon.

Q. West Oregon, yes. Now, did Mr. Kelly come back out forward before the accident occurred?

A. Yes, sir.

Q. And at what point of time before the collision was it that you called upon him to call the crew and Master? [96]

A. Well, shortly after I blew the last starboard passing whistle.

Q. And what instructions did you give him?

A. I told him to call the crew.

Q. And did you specifically mention the Master?

A. Well, I can't say. I told him to call the whole crew, call everybody.

The Court: Q. What else did you tell him? What reason did you give for it?

A. I told him we was going to hit.

Q. How soon after you had given this instruction to Mr. Kelly did the collision occur?

A. That is pretty hard to estimate. We was pretty close there and thinking about lots of things and it wasn't so very long.

The Court: What is the order of those whistles? I have dropped out one of the three starboard whistles, Mr. Young and Mr. Wood. I have here on the Barry "K" first two blasts followed by one by the Pennsylvanian. Then give me the sequence, will you?

(Testimony of Wm. A. Reed.)

Mr. Young: The first whistles were from the Barry "K", with two whistles.

The Court: Followed by one?

Mr. Young: Followed by one from the Pennsylvanian, followed by four blasts from the Barry "K"; no answer from the Pennsylvanian, followed by two blasts from the Barry "K"; no answer from the Pennsylvanian; next four blasts from the Barry "K"; no answer from the Pennsylvanian; next two blasts from the Barry "K", [97] followed by three blasts from the Pennsylvanian, followed by three blasts from the Barry "K".

That is all.

The Court: Mr. Wood?

Cross Examination

By Mr. Wood:

Q. Then it was immediately after your third two blasts that you dispatched Kelly to call the crew, because you thought there was going to be a collision? A. Yes, sir.

The Court: Q. You knew there was going to be one? A. Yes, sir.

Mr. Wood: Q. And how far were the ships apart then? I think you said a thousand feet, but I —

A. No, about 500 to a thousand.

Q. Five hundred to a thousand?

A. Yes, sir.

Q. And you called Kelly a watchman. What were his duties?

(Testimony of Wm. A. Reed.)

A. He is a lookout, but technically everybody calls him a watchman.

Q. And when did he leave the pilot house to go and tell the crew to get ready with the lines to pick up the barge? I don't mean by the hour of the clock, but was it before you saw the Pennsylvanian or afterwards?

A. It was after we saw the Pennsylvanian. [98]

Q. After the exchange of first signals?

A. No. Just before I blew our first signal or right close to it.

Q. Kelly left his position? A. Yes.

Q. And went aft to see about getting the lines ready to pick up this barge? A. Yes, sir.

The Court: Q. Went aft to see if the crew was ready? A. To see if the crew——

Mr. Wood: To see if the crew was ready to pick up this barge.

The Court: Q. Had some of the crew been sleeping? A. Yes.

Q. All of them?

A. No, just the deckhands.

Q. You went to call them for West Oregon?

A. West Oregon.

Mr. Wood: Q. And when did he return to the pilot house?

A. He never came back to the pilot house; he came back immediately forward of the pilot house right on deck.

Q. Just in front of you?

(Testimony of Wm. A. Reed.)

A. Just in front of me.

Q. What deck do you call that?

A. I would call it the cabin deck.

Q. That was the uppermost deck of the ship?

A. Yes, that he could get onto. About ten feet directly— [99] no, right down to measurements, he would be seven feet below me and directly in front.

Q. And when did he return to that place.

A. Immediately he went aft and came right back forward.

Q. Do you know how long he was gone?

A. He wasn't half a minute.

Q. And you were in the pilot house then alone except for the time Kelly was with you?

A. Yes, sir.

Q. And you regard him as your lookout?

A. Yes, sir.

Q. You had no lookout on the barges?

A. No, sir.

Q. Nor forward? A. No, sir.

Q. In other words, you alone with the assistance of Kelly were navigating the boat?

A. Yes.

Mr. Wood: That is all, your Honor.

Redirect Examination

By Mr. Wood:

Q. Did you ever carry a lookout on the forward end of the barge under those circumstances?

A. Not in clear weather. The lookout would be in or near the pilot house when navigating after night. [100]

(Testimony of Wm. A. Reed.)

Q. From where you were in the pilot house, could you see over the top of those barges clearly?

A. Yes, sir.

Q. At the time that you called Kelly and directed him to call everybody, all hands, when was that with reference to the time you stopped the engines of the Barry "K"?

A. That was just about the time I stopped the engines.

Q. That is all.

A. I did—may I say something?

The Court: Yes.

A. (Continuing) I didn't have to call Kelly; I just called to him. He was directly in front of me about seven feet where I wouldn't even have to holler; just an ordinary conversation, he would hear it.

Mr. Young: That is all.

Mr. Wood: That is all.

(Witness excused.) [101]

E. P. WILLIAMS,

resumed the stand as a witness in behalf of the Libelant and further testified as follows:

Mr. Wood: You had finished with Captain Williams?

Mr. Young: I think I would ask one further question, your Honor.

(Testimony of E. P. Williams.)

Direct Examination

(Continued)

By Mr. Young:

Q. Captain Williams, in your experience in travelling back and forth and past Post Office Bar, what is your judgment as to whether it is safe or practicable for a river ship to proceed upstream on the west side of the channel?

A. I think it is much more safer to pass on the east side of the channel.

Mr. Wood: That is not an answer to the question. I move to strike it.

A. How did you put that?

(The last question was read by the reporter.)

A. Not safe.

Mr. Young: Q. And in actual fact what has been the practice of river boats with respect to the use of the east side of the channel in going up and down?

A. Use the east side altogether, both ways.

The Court: Wait a minute. Going up, or going up and down? A. Up and down.

The Court: Both?

Mr. Young: Up and down, both; yes. I might say for the Court's [102] advice, the issue is solely with regard to the ship going upstream, but the witness's answer is broader than that.

The Court: Yes.

Mr. Young: Q. Then if you had, yourself, been in the pilot house on that particular night, which

(Testimony of E. P. Williams.)

side of that stream would you have piloted the Barry K up?

A. On the east side of the channel.

Q. And when you found the Barry K on the east side of the channel at the time the collision occurred, was there anything unusual about it being in that position so far as the side of the channel is concerned?

A. No, sir. That is the regular side to keep.

Mr. Young: That is all.

Cross Examination

By Mr. Wood:

Q. Now, Captain Williams, how long did you say you had been pilot or Captain of towboats? Did you say thirty-three years?

A. I said I had a license on river boats for about thirty-three years.

Q. But do you say you are now acting as a ship's pilot? A. Yes, sir.

Q. How long have you been doing that?

A. Oh, about four months.

The Court: You mean one of the Columbia River pilots?

Mr. Wood: That is what I am going to ask him.

Q. You mean the Columbia River Pilots Association? [103] A. Yes, sir.

Q. For the last four months?

A. Yes, sir.

Q. After this collision, did you remain for a time in the employ of the Western Transportation Company? A. Yes, sir.

(Testimony of E. P. Williams.)

Q. Do you know whether any instructions were issued by that company after this collision for its tugs and tows to keep to the right?

A. I never received one.

Q. You say you never received them. You don't know whether there were any or not. Is that what you mean?

A. I don't know. I said I never received any.

Q. Did you say that these lantern lights on those barges were visible through three-quarters of an arc of the horizon?

A. It depends on the position. They were on the corner of the board.

Q. I know. That is what I want to find out. The only way they could be put on the corner of those barges was to hang them on the nail wasn't it?

A. A hook.

Q. And that hook or nail, whatever it was, was nailed into the wall of the barges?

A. Just into the corner.

Q. Either on the forward wall or on the side wall, one or the other? [104]

A. Right on the corner, very close to the corner.

Q. Well. Now, these barges have a little deck around the house, all around the house, don't they?

A. There is a guard; yes, sir.

Q. And the lanterns that you have described are hanging on the wall of the house near the corner but not precisely at the corner, are they?

A. Right at the corner. The barges are constructed a little different.

(Testimony of E. P. Williams.)

Q. You draw it if you don't like mine. You draw it. Show me how those lanterns are placed.

A. I will have to draw a house on the barge.

Q. Well, I want you to.

(The witness drew on a sheet of paper.)

Q. Have you marked the position of the lanterns? A. Yes.

Q. There were not four lanterns on any of these barges?

A. I say that is the position of putting them out if you were only towing barges. It depends. If you had a barge alongside of you, you would use the other two lanterns on the other side of the barge.

Q. Were those lanterns on a bracket extending diagonally out from the corner of the barge?

A. No, they were on a hook close to the corner.

Q. Diagonally to the corner? [105]

A. Yes. Right out so the light—you mean straight in on the corner?

Q. Yes.

A. Usually pretty straight in, close.

Q. So that the lantern could be seen both from abaft and forward and the side? A. Yes.

Q. Is that what you say? A. Yes, sir.

Q. Now, Captain Williams, you said that this two-blast signal from the Barry K, which you heard, did not indicate anything peculiar to you?

A. No, sir; it didn't.

Q. You were in your cabin at that time, were you? A. Yes, sir.

(Testimony of E. P. Williams.)

Q. Were you asleep?

A. I had been asleep prior to the hearing of the two whistles, yes.

Q. But did the two whistles wake you up?

A. I imagine they did.

Q. And you recognized them as two whistles?

A. Two whistles.

Q. And they didn't in any way indicate to you the possibility of an accident coming?

A. Not those two whistles; no, sir.

Q. You thought that was quite in conformity with the Barry K's [106] custom to pass that way, did you?

A. That's right.

Q. Now, I want to ask you whether you testified before the United States Steamboat Inspectors——

The Court: Did he know where they were?

Mr. Wood: Q. Did you know where you were? Did you know where you were in the channel?

A. No.

The Court: Q. On the river. Did you know where you were on the river?

A. Not close at that time.

Q. Did you know you were in the Willamette?

A. No, sir.

Mr. Wood: Q. Where did you think you were?

A. Well, just as I woke up?

The Court: Q. When you heard those two whistles did you know where you were, whether you were in the Willamette or not?

(Testimony of E. P. Williams.)

A. Not exact position. I was in bed. I didn't know whether we had entered the Willamette or not.

Mr. Wood: Q. All right. I will ask you this. Let's assume you did know you were in the Willamette River and on Post Office Bar. Let's assume you knew that. And you had heard those two whistles. Would you say that meant nothing to you out of the ordinary?

A. That wouldn't mean anything to me; no, sir. [107]

Q. Not a thing. Because that would be in accordance with the Barry K's usual practice. Is that what you mean? A. Yes, sir.

Q. All right. Now, I want to ask you whether you testified like this before the United States Inspectors: "Question: When was your attention first drawn to the possibility of an accident? Answer: Heard the two blasts of the whistle of the Barry K." Did you testify like that?

A. I have no recollection of that.

Q. Here it is right in the middle of the page.

A. Not two blasts. That must be a mistake. There is a mistake there somewhere.

Q. You deny testifying like that?

A. I can't believe that I would. That is regular customary to hear boats passing at different points on the river blowing two whistles.

Mr. Wood: That is all.

(Testimony of E. P. Williams.)

Redirect Examination

By Mr. Young:

Q. I will ask you whether or not at the same hearing you were asked these additional questions and you gave these additional answers.

Mr. Wood: Are you impeaching him, now?

Mr. Young: No. I think——

The Court: Rehabilitating him.

Mr. Young: Yes. [108]

The Court: Yes, you are. I just happened——

Mr. Young: If the Court please, I am proceeding at this time upon this basis: that if counsel asks the witness——

The Court: Go ahead.

Mr. Young: ——a question with respect to a part of his testimony——

The Court: That is all we are interested in.

Mr. Young: ——I may ask the balance.

Q. “You heard two short blasts? Answer: I am not sure but there might have been two short blasts ahead of that. First I heard was two short blasts of the whistle.” Do you recall so testifying?

A. First I heard—that is the first I heard, was two short blasts.

Q. Were you asked this question and did you give this answer: “What did you do? Answer: Then I heard alarm whistles shortly after that.” Did you so testify? A. That’s right.

Q. And next, “What do you mean by ‘Alarm’

(Testimony of E. P. Williams.)

whistles? Answer: Four short blasts." Did you so testify? A. Yes, sir.

Q. "What did you do *then*? Got out of bed." Now, Captain, at the time you heard the two blasts of the whistle, did you get out of bed then?

A. No, sir.

Q. And why not? [109]

A. Didn't consider it anything only the regular passing whistle on some occasions, pass on either side.

Recross Examination

By Mr. Wood:

Q. Now, I am glad that counsel read the rest of that to you——

The Court: Let's put all that in, the whole record.

Mr. Wood: Shall I read it to you?

The Court: Put it in as an exhibit.

Mr. Young: If the Court please,——

The Court: All you are doing now is just reading it back and forth and putting your own emphasis, aiding on the one hand and making it difficult for the witness on the other, as to that testimony. Put it all in and claim everything you want for it and I will read it and consider it as part of the case.

Mr. Young: I want to understand what you mean. When you say "all" of the record, you mean the testimony of Captain Williams?

The Court: Well, usually we have all of these investigations put in, the whole record.

(Testimony of E. P. Williams.)

Mr. Wood: I am perfectly willing to do that.

Mr. Young: I have no objection to the testimony of Captain Williams. I object to the entire record. I think it is entirely irrelevant. It would be material only in the event there were some specific question which had to do with the matter of the impeachment of the witness involved.

The Court: Your office has often put the whole record in [110] these pilot board hearings.

Mr. Young: I am sure I don't know what the rest of the office has done in that. Mr. Wood has often put it in.

The Court: In this case I want it put in.

Mr. Young: Let the record show that I object to any part of the record being introduced except in so far as the testimony of Captain Williams is concerned.

The Court: The record may show that.

Mr. Wood: I am very glad to have it in. My own copy is marked up with a great many comments, and I suggest the proper way would be to get a clean copy from the Inspectors and put it in.

The Court: Clean or dirty. Any way so it is a proper copy of the proceedings.

We will adjourn, now, until tomorrow morning at 8 o'clock.

(Witness excused.)

(Thereupon, at 11:55 o'clock A. M., Court was adjourned until tomorrow, Wednesday, July 16, 1941, 8 o'clock A. M.) [111]

Wednesday, July 16, 1941, at 8 o'clock A. M., pursuant to adjournment, the following further proceedings were had:

Mr. Young: If the Court please, and with your Honor's permission, I should like at this time, just for the purpose of the record, to make a statement in regard to the admission in evidence yesterday of the transcript of the proceedings before the local office of the Bureau of Marine Inspection and Navigation with reference to the collision which is the subject matter of this litigation. There was no objection on my part to the introduction of that part of the transcript which had to do with the testimony of the witness, Captain Williams, himself. The objection, however, went to the entire balance of the transcript. By way of supplementing the objection then made, I wish to state that I believe the transcript to be, as a whole, entirely inadmissible for the following reasons: that it contains the testimony of a number of witnesses who probably will not even be present at this particular trial, and, as to them, their testimony in the prior proceeding would be entirely hearsay. Moreover, the testimony before the Investigation Board was all an *ex parte* matter in which there was no opportunity for cross examination of the witnesses on behalf of the SS. *Pennsylvanian* and being *ex parte* would be entirely improper at this time. Furthermore,—

The Court: What is the statement you just made?

Mr. Young: The testimony taken before the Investigation Board [112] was in the nature of *ex*

parte testimony for the reason that under the rules of the Board there is no opportunity allowed for cross examination of the witnesses by counsel for the opposing side.

The Court: Didn't you call the word "Pennsylvanian"?

Mr. Young: Yes. I am referring, now, particularly to the witnesses on behalf of the Pennsylvanian, because they are included in this transcript to which I am now directing my objection, and in so far as the matter is *ex parte* in effect it is quite clear that that testimony would not be proper to be presented in this court room in the form of a transcript.

The Court: You object to the findings of the Board being put in?

Mr. Young: Yes, your Honor, on the ground they would be entirely irrelevant so far as this proceeding is concerned. I think the transcript, itself, as I recall, does not contain any findings, but in the event that question should arise, it would be my position that that would be entirely irrelevant, incompetent, and immaterial so far as this proceeding is concerned, but moreover the transcript contains much material which is not testimony at all, but rather colloquy between counsel and the inspector, all of which is entirely irrelevant so far as this proceeding is concerned; that, finally, the only possible basis upon which testimony at the previous proceeding could be used here would be for the purpose of impeaching a witness upon the stand.

However, to use the testimony for that purpose it is necessary that the specific questions be called to the attention of the witness in [113] this proceeding toward the end that his answers, should there be any inconsistency, might be the subject matter of explanation by the witness at this time. I state that toward the end that our position with reference to that transcript may be clarified in your Honor's mind and for the purpose of your record.

Mr. Wood: Yesterday after your Honor requested that you would like to have the complete copy of the transcript before the Inspectors in the record, here, I went to the Inspectors' office and got a complete, clean copy, and have it here and was going to hand it to your Honor this morning in compliance with your Honor's request.

Now, Mr. Young really is not quite accurate in saying that this testimony is *ex parte* and that there was no opportunity for cross examination. The procedure at the Inspectors', as perhaps your Honor knows already, is that, first, they have an investigation. If that investigation seems to warrant preferring charges against any officer, then they have a second trial of that officer. Now, in this case they had the investigation. Now, the practice of the investigation is that interested parties are present, and after the examination of the witnesses by the Inspectors the interested parties are given the opportunity to cross examine the witnesses, to ask questions, not directly but through the Inspectors. That is, in this case the Inspectors would turn to

Mr. Young and say, "Do you have any questions to ask?" and Mr. Young would write his question out on a piece of paper and [114] hand it to the Inspectors, and the Inspectors would then ask the witness. The same thing was done with me. Now, as an instance of that, on page 22 of this transcript the Inspector said: "If there are any questions parties at interest would like to ask, they may do so through the Chairman of the Board. A Mr. Young, attorney for Western Transportation Company, wishes to suggest a question. (Writes question and submits to Chairman who refers same to Inspector Joachims.) Inspector Joachims: Requested question allowed." Then he asks it. "Was the Barry K in motion when the collision occurred?"

"A. He appeared to be.

"Q. What was the speed of the Barry K at the time of the impact?

"A. I could not assume that.

"Q. Is it not the practice for river boats at the point where the collision occurred, to proceed along the east side of the river, giving ocean ships the right of way in the main channel?

"Erskine Wood: Attorney for American Hawaiian Steamship Company. I object to that question, because no practice can go over the pilot rules. The rules are plain on that."

And Mr. Young and myself argued that point——

The Court: Well, since the practice question

which is being raised is a somewhat serious one, I will rule finally at the end of the trial on this, but I think we ought to standardize the practice. We have had this question up many times, and I don't see any reason now to depart from the established practice, and if you are not fully informed of what the practice has been, [115] Mr. Young, you might look into it further, and then, when you are fully prepared on it, I will hear you on it. Mr. Wood's office has urged on me more than once that there are definite precedents in admiralty, that the findings of the Board may come in, as I recall, in the nature of expert opinion testimony, something along that line. Your son cited to me an admiralty decision by one of the Portland admiralty courts in *New York v. Elliott*, two or three years ago.

Mr. Wood: I don't remember the case.

The Court: We had these findings in on the death case down by the bridge. That school boy was in the launch. We had them in just the other day in a case that Mr. Dezendorf tried. Those two come to mind, but there are others, I know. It nearly always follows that after the findings come in one party or the other thinks that the whole record should come in. That is the sequence usually.

Mr. Young: Yes. If the Court please, after your Honor had mentioned that other members of our firm had appeared in cases before your Honor where this same matter had come up and the transcript had gone in, I made some check, myself, and the

only cases I could learn about, the transcript went in by consent by both parties. In other words, there was no objection raised to the propriety of the documents being admitted in evidence. Obviously, if counsel for both sides consent to it, the point that I am now urging is not right. I have taken the position [116] that the matter is improper in the form——

The Court: For the present I will remain entirely uncontaminated and won't ask for it or read it, and at the end of this case will go to the bottom of it and attempt to settle it as a permanent rule of practice in these cases.

Mr. Wood: I think at this time I should offer the Pilot Rules in evidence. The Court, I know, will want them, and there has always been some question whether they ought to be in evidence or whether the Court takes judicial knowledge of them, and the simple thing is to offer them.

Mr. Young: I had assumed that they were part of the law and were before the Court, but I, of course, have no objection to their being introduced if counsel wishes.

The Court: They may be admitted.

(The copy of "Pilot Rules," so offered, was received in evidence and marked Respondent's Exhibit 9.)

N. W. STAYTON,

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Captain Stayton, where do you live?

A. Portland.

Q. And how long have you lived here? [117]

A. Oh, about forty-seven or forty-eight years.

Q. And what is your occupation?

A. Columbia River pilot.

Q. How long have you been a Columbia River pilot?

A. Twenty years.

Q. How long have you had experience in the handling of boats on the Willamette and Columbia rivers?

A. I didn't get you.

Q. How long have you had experience in any capacity in the handling of boats on the Willamette and Columbia rivers?

A. About forty years.

Q. In the beginning, what was the nature of your work on the river?

A. Well, I began as a deck hand and——

Q. On river boats? A. On river boats.

Q. And how long were you a deck hand?

A. About four years.

Q. And then what were you after that?

A. A mate.

Q. And is this still on river boats?

A. Yes, sir.

Q. How long were you a mate?

(Testimony of N. W. Stayton.)

A. About two years.

Q. Then what next?

A. Master and pilot. [118]

Q. And have you been a Master and pilot since the time that you have just indicated?

A. I have.

Q. Now, what licenses do you hold?

A. For the Columbia River and its tributaries.

Q. And as I understand, you have had experience in the operation both of river boats upon the Willamette and Columbia rivers and also of ocean-going ships? A. I have.

Q. Since you have been a Columbia River pilot, has your work been primarily that of operating ocean-going ships? A. I have.

Q. In connection with your work, have you had occasion to be familiar with what is known as Post Office Bar in the Willamette River near its confluence with the Columbia? A. Yes.

Q. At how frequent intervals have you had occasion to go past Post Office Bar in your forty years or so of experience?

A. Well, since I have been piloting I would say from one to six times a week.

Q. That is in both directions on the river?

A. Either up or down.

Q. Captain, in the piloting of an ocean-going vessel, what is the width of the channel with which you are concerned?

A. Well, we are concerned with the deep water channel. [119]

(Testimony of N. W. Stayton.)

Q. And how many feet is that?

A. Thirty-five feet.

Q. Are you concerned with what has been referred to in this case as the thirty-foot channel?

A. I didn't understand.

Q. Are you concerned at all with what has been referred to here as the thirty-foot channel?

A. Oh, yes. We want to know where all of the water is.

Q. However, in the piloting of an ocean-going ship, what is the practice with regard to whether you confine the movements of the ship to the 35-foot channel?

A. We try to stay within the 35-foot contours, if it is possible.

Q. In the vicinity of Post Office Bar, do you know what the width of the channel there is? I am referring now to the 35-foot depth.

A. 35-foot depth, right at that Post Office Bar front flashing light, 700 feet, 35-foot depth.

Q. And how does the width of the 35-foot channel vary up and down stream from Post Office Bar?

A. Well, it begins on the upper end of Post Office Bar at the West Oregon mill. It is the full width of the river, there, and then it tapers down to 700 feet at the lower end—at the range and then from that on down why it continues out to about 600 feet out at the mouth of the river.

Q. Captain Stayton, do you know where the city limits of Portland [120] are with reference to the Willamette River and Post Office Bar?

(Testimony of N. W. Stayton.)

A. I think I do.

Q. Approximately where are they?

A. On a line just below the Terminal No. 4, and crosses the river there and comes in between the Associated Oil dock and the West Oregon mill.

Q. And how far would that be from Post Office bar, approximately?

A. Well, it is more than three-quarters of a mile above the upper end of Post Office Bar.

Q. In the piloting of ocean-going ships downstream from the city limits of Portland and on down past Post Office Bar, what is the customary speed of ocean-going ships at that point?

A. Well, there is no speed limit after you leave—that I know of, after you leave the city limits.

Q. What is the customary speed of ocean-going ships in going downstream?

A. Well, it depends a great deal upon the size and draft and how a ship handles and all of that. We—all the way from a slow speed to a full speed.

Q. Within what limits would that vary in miles per hour?

A. Well, about five or six miles an hour up to eleven or twelve.

Q. From your experience in the handling both of river boats and of ocean-going ships, what can you say as to whether it is safe or practicable for river boats to proceed either up or down stream on the west side of the channel in the vicinity of Post Office Bar? [121]

(Testimony of N. W. Stayton.)

A. I would say it is a very ticklish place for them to get into that bend, there.

Q. What would you say as to whether it is either safe or practicable for the river boats to use the west side of the river at that point?

A. I would say it was not safe or practicable, either one, because the channel hangs pretty close—closer to that side than it does to the east side.

Q. How does the depth vary from the west to the east side at that point?

A. Well, on the west side there is a dike extends along down Sauvie Island from Post Office Range east on down below Post Office Lower light, and it makes out from a shoal from that side, from the shore side out about 200 feet until it comes out to the main ship channel.

Q. And then what is the depth of the water as you proceed on over to the east bank?

A. Well, then when you leave the—after you get into the ship channel you cross the ship channel, then it begins to taper up on the other side and there is about 400 feet from the ship—the main ship channel—up to the shore line there where it tapers up, shoals up.

Q. Can river boats with safety to themselves use that side of the river which is close to the east bank?

A. Much easier than they can the west side.

Q. And why? [122]

A. Well, they are out of the way of traffic. 'Most

(Testimony of N. W. Stayton.)

all traffic comes down—coming down there swings into that bend and they have—slide over into that bend sometimes further than they figure they do unless they can make a short, quick and short turn, there, and it has always been customary to follow that bend around for deep water vessels, because in the earlier days why the channel was entirely around that side and we only had about 250 foot of a channel and then it has been widened. As it widened out why they have taken a little off of the east side of the channel and taken off until they have got it out to 600 feet now below the ranges.

Q. What has been the custom with respect to the side of the river which the river boats use in proceeding up and down Post Office Bar?

A. Ever since my beginning on the river, boats have always followed around on the east bank of the river, east side of Post Office Bar.

Q. That is, the river boats have always done that?

A. The river boats have always followed around that way with a tow. In the earlier days we used to tow over quite a bit further than that and up over in through a hole that was in a dike, but it has been filled in now with dredger dumps so they still follow the same——

Q. Now, you say that that custom has existed during all of your time. That is the past forty years, you mean?

A. It has with probably just one or two exceptions. Somebody would [123] get over on the other

(Testimony of N. W. Stayton.)

side and generally they get into trouble if they happen to meet a vessel coming down if they are coming up.

Q. Now, you mentioned that there is a dike on the west side of the river. To what extent would that dike present a hazard to river boats which, let us say, might be travelling up the west side of the stream at that point?

A. Well, at certain stages of the water, that dike is built of piling, rock, and such like, and there is no tall piling or dolphins or anything to mark the outline of that dike, and there is one spur in particular that projects out there and if a river boat was following that side and trying to keep out of the way of ocean traffic they generally get into that dike too close, especially if they have—are towing barges or something that has quite a bit of wind resistance and the wind is blowing from the east, it would carry them into that dike.

Q. Captain, assume the case of a river stern-wheel tugboat which is proceeding upstream with two barges, one on the nose and the other one on the port side forward, the over-all length from the stern wheel to the forward end of the leading barge being about 325 feet. In your judgment what distance would the pilot of that tug have to stay off this dike as a matter of safety?

A. Well, he would stay off at about the edge of the main ship channel. It would be about 200 feet.

Mr. Young: Yes.

(Testimony of N. W. Stayton.)

(The last question and answer were read by the reporter.) [124]

Mr. Young: Q. In referring to the main ship channel, what depth of channel are you referring to? A. 35-foot.

The Court: Well, now, do we understand the answer?

Mr. Wood: Yes, I thought the main ship channel as shown by the chart there extended right up to the dike. In fact, I thought the witnesses so testified.

Mr. Young: Counsel will argue the case in due course, I assume.

The Court: I think this ought to be made clear, at least cleared up for me. This is the kind of question that goes clear through the case and nobody agrees on the answer.

Mr. Young: I thought the answer was clear.

The Court: What do you claim the answer means?

Mr. Young: The answer means that the ship which is proceeding—the river boat proceeding upstream, if it is travelling on the west side of the stream, must travel approximately 200 feet out in the water from this dike in order to provide safety factors to itself.

The Court: Q. Is that what you mean by the answer, Captain? A. Yes.

Q. You must stay 200 feet easterly of the dike?

A. He must stay clear about 200 feet to give him a chance to make a swing.

(Testimony of N. W. Stayton.)

Q. To make it just as simple as possible, he must never get closer to the dike than 200 feet. Is that what you mean? [125]

A. That is what I consider safe; yes, sir.

Mr. Young: Q. Now, Captain, in the case of a river boat which is proceeding upstream on the right-hand side of this channel at this point, where would it be with reference to the curve of the river; that is, would it be on the outside of the curve?

A. No, —

Q. Going upstream?

A. It would be out, outside of the curve, yes.

Q. And what is the effect on a river boat——

A. Pardon me. I didn't just get that just right. He would be on the short side of the curve, you might say.

Q. He is coming up on the west side, now?

A. Coming up on the west side——

Q. Let us assume he is coming up on the west side. Is that on the outside of the curve?

A. That is the outside of the curve.

Q. What is the tendency of a river boat in making a turn on the outside of the curve with reference to side-slipping?

A. Well, a steamer coming down, there, he comes down and naturally his stern swipes around and throws his swell in towards the curve, and it would throw it towards the stern-wheel boat, or the up-river boat.

Q. What effect would that have on the up-river boat?

(Testimony of N. W. Stayton.)

A. Well, if he had barges or such like as that he would get more of a swell and more of a disturbance in there than he would on the [126] other side where the stern was throwing away from him.

Q. Is this swell to which you refer what has been mentioned here as a displacement swell?

A. Both a displacement swell and a kick-water swell. There is very little kick-water swell. It is mostly a current in an ocean-going vessel.

Q. To what extent does the amount of this displacement swell of the ocean-going ship depend upon the speed of the ship?

A. It depends upon the speed, size, draft.

Q. The draft, also? A. The draft, also.

Q. And as the speed of the ship and the draft increase, what effect does that have upon the displacement as well?

A. It generally makes more of a swell.

Q. Now, Captain, in your judgment, if a river boat with the tow, as I have indicated, were proceeding up the west side of the channel opposite Post Office Bar and an ocean ship were going down in the channel, how far would you say the river boats would have to stay away from the ocean-going ship for factors of safety?

A. Well, they would stay away—there is plenty of clearance in there all right, if the river boat—or the ocean-going vessel was in the channel, in the center of the channel.

Q. What is your answer to the question as to how far apart they should stay for safety?

(Testimony of N. W. Stayton.)

A. Well, fifty feet is safe. Just a miss is safe, all right. [127] Lots of times we just miss one.

Q. Well, is it a good idea to be running close enough that you just miss one?

A. It is not a good idea.

Q. To what extent does the answer to your question depend upon the length of the ocean-going ship?

A. Well, if an ocean-going vessel is coming down there and the vessel would be around 400 feet in length, I should say that the vessel should be at least a hundred feet away from the tow, anyhow, or a vessel that was in the bend.

Q. Now, what effect does an easterly wind at that point have upon the operation of river boats with tows if they are staying over on the west side of the river?

A. It has a great deal of effect. That is the greatest menace to a river boat towing along the Swan Island side or the west side of the channel.

Q. Will you explain your answer now?

Mr. Wood: Q. The Swan Island side, did you say?

A. Yes, the Swan Island—the west side of the channel. Or not Swan Island. Sauvie's Island, I should say. Pardon me.

Mr. Young: Q. Pardon me. I think there is no controversy. The river bank on the west side of the river opposite Post Office Bar is Sauvie's Island. Yes. Go ahead, Captain.

(Testimony of N. W. Stayton.)

A. Well, an east wind strikes right across there, and if a boat is towing barges with a high deck-house or a high fence house on [128] it, such as these sawdust barges are accustomed to have, that wind has quite a bit of resistance on this barge, and they are flat on the bottom and they slide to a great extent, and a boat coming up there is almost got to come kind of quartering to the wind and in the stream at the same time to hold her head up to this wind, if she doesn't have enough headway to withstand that resistance or slip that they would have from the wind.

Q. Would a wind of, say, an easterly breeze, of, say, ten to fifteen miles an hour have that effect?

A. Yes, a ten-mile breeze would have quite an effect on a light barge with a high house.

Q. The evidence in this case——

Mr. Wood: Excuse me a second. I should like to interrupt, with everybody's permission. I should like to know if the witness understands these barges were loaded. They weren't light.

Mr. Young: If the Court please, I think opposing counsel will have proper opportunity for cross examination.

Mr. Wood: It was for clarity that I suggested that.

Mr. Young: Q. Captain Stayton, the evidence in this case indicates that the Barry K at the time of this accident, it being a stern-wheel boat about 165 feet over-all, had a barge on the nose and one

(Testimony of N. W. Stayton.)

on the forward port side, the total length over-all being about 305 feet. These barges stood—the deck-houses on the barges were about twenty feet high above the water line. The highest point on the Barry K, itself, according [129] to the evidence, is around 34 feet up to the top of the pilot house. The barges were loaded at the time of the accident. The draft of the barges was between four and five feet, and the draft of the Barry K, two feet eight inches. Now,—

The Court: They were loaded with paper.

Mr. Young: Loaded with paper, yes.

Q. Now, Captain, would the ten to fifteen-mile easterly breeze under those circumstances produce the effect upon the river boat and the tow which you have indicated?

A. I would say it would, because a four-foot draft barge flat bottom with a high deckhouse, as you have stated, on those barges, would have quite a bit of wind resistance. Another thing, barges and the length of the boat extended out there from her rudder, which is in the stern of the vessel, about three hundred and some feet, and those rudders there are only in the water around about three feet or something like that. It is customary. I suppose hers is the same way as the others.

Q. Now, you testified that the river boat, if proceeding upstream on the right-hand side, would be required to quarter into the wind. To what extent would this quartering necessitate the river boat

(Testimony of N. W. Stayton.)

taking up more space on the water's surface than if it were not required to quarter?

A. Well, it would be quartering on either side of the channel. She would have to hold herself in practically the same position. On the east side of the channel they have a little protection [130] from the trees over there, more so than they do on the embankment, more than they do on the west side, but that barge would probably be travelling up the river at about—well, sometimes they travel up the river almost at a 25-degree angle.

Q. What I am getting at is, if the barge is travelling up the river at a 25-degree angle, state whether or not it is requiring more surface of the river in which to travel than it would if it did not have to travel at the 25-degree angle, but could go straight ahead.

A. Certainly it would take more.

Q. Now, in the event that the river boat, however, is over on the east side of the river and either at the edge of the channel or in the shallow water, to what extent does it have protection there from this wind effect that you have mentioned?

A. From the east side, it is protected by trees and an embankment to a certain extent.

Q. Captain, are you familiar with Article 25 of the Pilot Rules, which refers to narrow channels?

A. I think I am.

Q. Assume, Captain, the case of an ocean vessel which is proceeding down the channel of the Willa-

(Testimony of N. W. Stayton.)

mette River past Post Office Bar. What can you say in light of Article 25 is the duty of the pilot of the ocean-going vessel with reference to whether he may insist or not upon proceeding down on his right-hand side?

A. Well, Article 25 says you shall pass port to port, unless you [131] find it unsafe or impractical to do otherwise.

Q. Suppose that that ship in proceeding downstream meets a river boat which is proceeding upstream and is on the same side of the river as the downstream vessel. What, in the light of Article 25, would you say would be the duty of the pilot of the downstream vessel?

A. Well, in all my experience, it has never been considered safe and practical to be around in that bend. In the first place, to enter that bend from the lower end, the beam of 3 Tree beacon or around Gillihan Point, a vessel coming up around that bend, it would have to cross in around the point and keep there, which he would be pretty close in to the channel on that one particular point, there, and then he would have to follow that bend all around in there, and especially if there were any other vessels meeting or anything else in there, and sometimes there are as many as four and five towboats along Post Office Bar at one time. If four or five towboats should be up in that bend at Post Office Bar at one time, they would extend out across the ship channel, and whatever ship came down, if one

(Testimony of N. W. Stayton.)

should happen to come at that time, he would have to get out of the channel or over some place or stop until they got out and gave him a clearance. Otherwise they can tow around the east side of the channel and keep away—they are coming away from the ships all the time, and keep away from them at all times, if the ship will stay anywhere from—well, if he would stay even inside of the 35-foot contour they [132] have plenty of room over there to go over there. They've got four hundred feet from the ship channel over to the dike.

Q. Now, who has the four hundred feet from the ship channel of the 35-foot contour to the dike?

A. On the east side.

Q. And that would be available for which boat?

A. River boats could go in there, or any of these river boats, up to eight- or ten-foot draft, could go in there.

Q. Is it your understanding and based upon your experience in the operation both of river and ocean-going ships at this point and under Article 25, the pilot of the downstream ocean-going vessel has any absolute right to stay on his right-hand side of the river when meeting a river boat?

A. He has—I wouldn't say that. The pilot has the right to stay on the right-hand side of the channel, on the right-hand side of the channel, but a river boat can get out of the channel if he wants to.

Q. And then within the meaning of Article 25 would a starboard to starboard passage under those

(Testimony of N. W. Stayton.)

circumstances meet with requirements of safety and practicality at that point?

A. A starboard to starboard passage is what all towboats and ocean-going vessels have generally held up to.

Q. To what extent, Captain, can you say that tugs and river boats have occasion to use the Willamette River in the vicinity of Post Office Bar day by day? [133]

A. There is more than ever going up and down there now. You hardly ever go by there but what you find from one to four or five tugs in that district.

Q. And about the 1st of February this year, and for some months before that, what would you say was the situation in that regard?

A. Well, it has been that same situation for the past year or more.

Q. Is this custom of river boats to use the east side of the river in passing Post Office Bar well known among the pilots in the Columbia River?

A. It is.

Q. And it has existed, you say, for at least forty years to your knowledge? A. It has.

Q. Captain, assume that you were piloting an ocean-going ship downstream at Post Office Bar or anywhere on the river for that matter in the night time, and ahead of you you should observe a ship or boat approaching with two white mast lights, and then ahead of it—and also either a red

(Testimony of N. W. Stayton.)

or green side light—and then ahead and near the water line you saw at least two white lights, separated some distance apart. What, if anything would those signals mean to you as to the identity of the vessel approaching?

A. I would think it was a towboat of some kind approaching with barges ahead of her or alongside.

Q. Will you state whether or not it has been the practice for years past for towboats pushing barges ahead to have those barges [134] lighted on the forward corners by ordinary white lights?

A. It has been.

Q. And is that circumstance well known to pilots in this area? A.. It is.

Mr. Young: You may cross examine.

The Court: No. Just a minute.

Q. How about the depth of the water along there? What do the charts show as to the depth right up to the dike?

A. There is a dike on both sides.

Q. On the west side.

A. On the west side, they show——

Q. Here is the chart if you want to refer to it.

A. Do you want me to go over there?

Q. Bring it out quickly, please. Step down to the chart.

A. Well, this chart doesn't show the soundings in there within about a hundred feet—within about a hundred feet of the dike, Judge.

Q. And what water is shown nearest?

(Testimony of N. W. Stayton.)

A. The shoalest water shown along there is about twenty-nine feet within about a hundred feet of the dike.

Q. What is your idea as to how far out from the dike the 35-foot channel begins?

A. The 35-foot channel begins right along this line here (indicating). This is the contour line of the 35-foot contour, and then this little line, this little dotted line in here, shows the 30-foot [135] contour along in there.

Q. How close in to the dike, if you were going down the left side, would you take a load of ocean-going boats four hundred feet or so long?

A. I wouldn't go within a 300 feet of the dike with an ocean-going vessel in close quarters.

Q. Aside from meeting traffic or anything else, just suppose you had the fairway clear.

A. If everything was all in the clear I would go right down the middle of the ship channel, which would be about 500 feet off from the dike.

Q. And what is your idea about how far out from the dike the 35-foot water begins?

A. The 35-foot water begins two hundred feet from the dike.

Q. And that channel is 700 feet, as I understand?

Mr. Wood: 800 feet—it is a 30-foot channel, which is the former channel. In recent years it has been deepened to thirty-five feet. But the 30-foot channel which prevailed for years is 800 feet wide.

(Testimony of N. W. Stayton.)

Mr. Young: If the Court please, counsel has made a statement, here. I should like——

The Court: Get on the witness stand, Captain.

Mr. Young: I should like to make one statement with reference to what counsel has just said, that the 30-foot channel is wider than the 35-foot channel, and the witness in his testimony with [136] reference to the position which is to be, in his judgment, occupied by the ocean-going ships, would be confined to the 35-foot channel rather than the 30-foot.

The Court: Cross examine, Mr. Wood.

Cross Examination

By Mr. Wood:

Q. Taking up your answer to almost the last question, Captain, I want to make sure about it. If you were coming down on an ocean steamer, a pilot on her bridge, and you met a towboat coming up a mile away and you elected a starboard to starboard passage, you would go to the left. Did you say you would not go within 300 feet of the dike, or 300 feet of the edge of the channel? What did you say?

A. No, I wouldn't go within 300 feet of the dike, I said.

Q. You mean you would go then how close to the edge of the——

A. I would go out close to the edge of the channel. That would be within—within a hundred feet of the 35-foot contour along there, and that would be about 300 feet from the dike.

(Testimony of N. W. Stayton.)

Q. That is as close as you would go?

A. Yes, sir.

Q. And what would you expect the river boat to do?

A. Well, any time I would ever go down there, I would expect one of these towboats or river boats to be going—heading over for the east side of the channel.

Q. How far? [137]

A. East side of the river.

Q. How far over?

A. Well, they generally go over and give us plenty of clearance down there, and that is a custom that is known to all—pretty near every towboat man. I don't know a towboat man that doesn't understand that, getting over there and getting out of the way, and if I saw a towboat ahead of me in the channel on the west side of the river, I would begin to get my ship under control and get her stopped, because I would know that that man was an inexperienced man or would feel that he was inexperienced or a stranger or something, that wasn't acquainted with the conditions in that bend.

The Court: Q. Do you have tourists on the river as well as on the highways?

A. Well, we do sometimes. Strangers come along there that are not accustomed to that towing, that have been on some other kind of a boat or something.

(Testimony of N. W. Stayton.)

Mr. Wood: Q. Now, to get back to my question, I wish you would answer it. If the towboat meets a ship coming down, what is the towboat supposed to do if she elects a starboard to starboard passage?

A. Well, he generally starts to haul over, and if he is out far enough—but as a general thing they keep over. They are over there in the beginning.

Q. If the towboat elects a starboard to starboard passage, she is [138] supposed to yield the whole ship channel to the ocean steamer and to get over in the shoal water where the ocean steamer can't come, is she not?

A. Well, yes. He generally goes over that way.

Q. That is what is expected of her, isn't it?

A. The edge of the channel.

Q. You know, don't you, that in narrow channels if one boat blows two blasts that is only an invitation to the other ship, a request, for the starboard to starboard passage. You know that, don't you?

A. Certainly.

Q. And you know, don't you,—

A. (Continuing) That means that he is directing his course over to the—

Q. You also know that the boat that blows the two blasts takes the risk of the passage, doesn't she? She has got to get out of the way?

A. I don't know as it is taking any risk. I never knew he was taking any risk, any more than he was any other way.

(Testimony of N. W. Stayton.)

Q. Well, don't you know that the ship that blows the two blasts in a narrow channel assumes the risk of the passage being successful?

A. If a vessel chooses——

Q. Now, answer that question, please, and then you can say what you want.

A. I didn't get the question so I could answer it. [139]

(The last question was read by the reporter.)

A. No, sir.

Mr. Wood: Q. All right. Then you do admit, however, that in this particular vicinity, Post Office Bar, the towboat coming up and blowing two blasts is expected to yield the full ship channel to the ship and to get away over into the shoal water. That is true, isn't it?

A. I don't know as that is true.

Q. Well, I think I can refer to your testimony before the Inspectors about that if you will give me just a moment. I will ask you whether you testified like this on page 34 of your testimony.

Mr. Young: What page is that?

Mr. Wood: 34.

Q. (Continuing)

“Q. Do you claim that she had the right to be over on the lefthand side of the channel because she had this tow?

“A. I don't consider that a ship channel when she gets out of the 35-foot contour.

“Q. Then in your opinion if she is going to

(Testimony of N. W. Stayton.)

be on the lefthand side of the channel coming up, she should be outside of that 35-foot contour?

“A. Well she should be, but I don’t consider that the ship in meeting any vessel, up or down, has any right on a 600-foot channel to be to the extreme right or left of that channel meeting any ship or ocean-going vessel, or an ocean-going vessel in the Columbia River.”

Did you testify like that?

A. Well, I think that answers my question, that I don’t think—that a ship coming down there should take up a 600-foot channel [140] if he has all of the rest of the clearance where we go down the river. We used to run the Columbia River with a 250-foot channel, and we have only a 500-foot channel from the mouth of the Columbia River to the sea, with the exception of a few places. All dredge cuts are only 500 feet.

Q. Well, you do admit, here, don’t you, that you testified that the up-coming towboat ought to keep out of the ship channel entirely if she assumes that passage?

A. I will say the same thing of a good many other things—yes, I will say the same things of other things.

Q. All right. Now, to get back to this old-time channel that used to be there, how wide was it, the ship channel?

A. The ship channel was 250 feet wide.

(Testimony of N. W. Stayton.)

Q. And how deep was it?

A. It was twenty feet deep originally.

Q. How long ago are you speaking of?

A. I am speaking back to 1916, when I was working for the Port of Portland, when I began on the project of digging it to twenty-five feet.

Q. And it was under those conditions that this custom started, was it not, that is, of towboats claiming their right to keep to the left-hand side?

A. It was there when I started in around—as I was working on deck on vessel in 1905 or 1895—I started in 1894, and I remember a little back about 1895. [141]

Q. At any rate, whenever you started, when the channel was 250 feet wide and twenty feet deep, the custom then prevailed for towboats to come up on the left-hand side, didn't it?

A. It has always been that way.

Q. And then when was the channel widened?

A. Well, the channel has been widened from time to time until around three or four years ago it was widened; they took that point off over there across from Post Office Lower light and extended it down there and widened it out to 600 feet.

Q. No, it is widened to 800 feet, is it not?

A. It is not widened to 800 feet only—it is 600 feet right abeam of Post Office Lower light. It is 625 feet right abeam of the rear range—

Q. What depth channel are you talking about?

A. At thirty-five feet.

(Testimony of N. W. Stayton.)

Q. I am speaking of the 30-foot channel.

A. Thirty-five feet is what the Government Engineers figure for a ship channel. They don't make——

Q. How long ago was that 35-foot project adopted?

A. The 35-foot project was adopted about—well, I don't know. About six years ago they started in on that project and they deepened to thirty-five feet. The dredges was digging to thirty-seven feet, leaving two foot for silting, with a thirty-five foot channel, and that was the first time after that project was put through that we could get down the river with a 32-foot draft vessel. [142]

Q. And at the present time there is a ship channel there thirty feet deep and 800 feet wide, isn't there? You can see it on the chart, if you want to.

A. It is more than 800 feet, Mr. Woods. It is more than 800 feet at thirty feet wide.

Q. All right. Eight hundred feet is wide enough for me. Even in the old days when the channel was 250 feet wide, how did ocean-going steamers meeting there pass?

A. Why, in olden days, or in my beginning, when large steamers was coming down there and had to pass, one vessel had to stop while the other one—and they would drift by each other. They would begin to slow down and finally come to a stop.

Q. How did they pass? Did they pass port to port?

(Testimony of N. W. Stayton.)

A. The ocean-going vessels always passed port to port.

Q. In that channel? A. Yes, sir.

Q. Even at its narrowest time? A. Yes.

Q. And now they pass there port to port all the time without the slightest difficulty, don't they?

A. They do if there is no obstruction in the way.

Q. They don't even have to slow down to pass each other in that 600-foot channel, do they?

A. It depends on the class of vessel you are handling. You wouldn't expect to run two heavy-draft vessels through there at [143] full speed, meeting.

Q. On this question of the speed of ships going down the river, Captain, you said that the ocean steamer makes a displacement wave depending on her draft and speed and size, didn't you?

A. Yes, sir.

Q. And you implied, if I understood your testimony, that the displacement wave of such a steamer going down Post Office Bar might be some handicap to the up-coming towboat if she took the right-hand side. Did you make that implication?

A. I think I said the left-hand side, if she took the left-hand side, didn't I?

Q. Now, I mean if the towboat came up in obedience to the rule on the right-hand side?

A. If the towboat came up on the right-hand side?

Q. Yes. And met an ocean-going steamer coming

(Testimony of N. W. Stayton.)

down. Did you say that the displacement wave of the steamer might have an injurious effect on the towboat?

A. If a vessel is travelling real fast, the displacement swell throws out from both sides of the vessel and there wouldn't be but—it would be—the vessel making the curve, if the vessel was in making the curve would throw most of her swell into the curve——

Q. What do you mean? Her displacement swell?

A. Yes. Her displacement swell and her stern swell, too. Some vessels have more of a stern drag and more of a stern swell than others. [144]

Q. Well, that depends greatly on the speed of the steamer, does it not?

A. Well, yes; the speed and size.

Q. Now, don't the Inspectors' rules require steamers to slow down when passing other craft in narrow channels under circumstances where the displacement swell may affect the other craft?

A. I have never seen it.

Q. I say, don't the Inspectors' rules require something like that?

A. I have never seen nothing of that kind, don't know of anything of that kind.

Q. Can the towboat by herself slowing down reduce the effect of the displacement swell, say, on the line, breaking her lines on her barges?

A. Well, when they strike those swells, as a general thing they stop the boat and just let them take it, and they have to take it the best they can.

(Testimony of N. W. Stayton.)

Q. I say that reduces the effect?

A. Yes, that reduces the effect of this.

Q. How long do they have to stay stopped? A minute?

A. Sometimes the swell kind of quiets down. You can't—

Q. How long is it, ordinarily, when a ship passes? A. I would say a couple of minutes.

Q. Two minutes? All right. Now, when you said that the Barry K and her two barges could have come up there on the right-hand side and keeping two hundred feet off the dike, what position did you [145] mean that the Barry K was then in? Did you mean she was coming up a little athwartwise of the channel as you intimated they sometimes do, or would she be coming up straightwise of the channel?

A. I think when I made reference to that, my reference was to a beam wind and a wind blowing from the east across there. If there was no wind, or if the wind was from the other side, she would always head into the wind, if she has got a heavy tow that way on her bow and a high deckhouse.

Q. That is what I was coming to. If the wind were coming straight downstream, she would get in closer to the dike, wouldn't she, than if it was coming from the east?

A. If it was blowing directly about from the south, you might be able to get in a little bit closer.

Q. And suppose the wind was blowing from the west?

(Testimony of N. W. Stayton.)

A. Well, if the wind was blowing from the west, he could probably get in a little closer, because he would have a chance to get away from the dike.

Q. Now, we come to a specific question, here. Assume that there was a ten-mile breeze from the east and a current downstream of perhaps a mile an hour. How close would the Barry K have got in to the dike if she came up on the right-hand side?

A. Well, if the Barry K was coming up along that shore and he saw fit, he could land agin that dike if he had to, but to tow along there safely I would say that he should stand off from that dike at least 200 feet. [146]

Q. You mean with the stern——

A. With an east wind.

Q. With the stern of his ship 200 feet off the dike?

A. Well, from where the bridge of the ship might be. His stern might be closer than that to it, but his bow would probably be further away.

Q. That is what I was coming to. His stern would be in even closer to the dike?

A. Yes, his stern would probably be closer to the dike, but he has got to allow room for his stern wheel fanning around there that he doesn't pick up that dike.

Q. And that would be safer for him to do if the bridge part of his ship was 200 feet off from the dike?

A. That would depend a good deal, too, on the

(Testimony of N. W. Stayton.)

height of the water in the river. If that dike was covered, I don't think that any stern-wheeler towboat man of any kind——

Q. All right. How much clear water would that leave for the down-coming ship in the 30-foot channel? A. In the 30-foot channel?

Q. Yes.

A. He would have 600 feet, six to seven hundred feet, seven hundred feet on the bend and six hundred feet on the straight-of-way through there.

Q. And that would be a perfectly safe passage, wouldn't it? A. I should think so. [147]

Q. I think so, too. In fact, when you testified before the Steamboat Inspectors, you admitted that there was room there for a down-coming steamer and a towboat to pass, with the towboat passing on either side of the steamer, didn't you, and safe and practical to do it? If you don't remember it, I will read it to you.

A. I don't think I said that it was safe and practical—or that it was practical to do it. He could pass with safety, but not with the same amount of safety that he could on the other side.

Q. I will read you this testimony and ask you if you so testified.

“Q. Suppose that there is only one down——”

Mr. Young: What page?

Mr. Wood: 39, the top of page 39.

Q. (Continuing)

“Q. Suppose that there is only one down-

(Testimony of N. W. Stayton.)

stream ocean-going vessel and one upstream river boat. Is it not a fact that whether the river boat needs to go completely out of the channel would depend in part at least upon just how much of the main channel the ocean-going boat is occupying?

“A. That is true. There is room enough for an upcoming river boat and a downgoing ocean steamer in that channel to pass port to port, providing there is no other ocean steamer in the vicinity.”

And—well, I will ask you, do you remember testifying like that? A. Yes, sir. I say so yet.

Q. And did you testify as I am about to read to you?

“Q. Captain, assume that there is only one ocean-going steamer, going downstream and only one river boat with tow coming upstream, and let us assume that they are going to make a starboard to starboard passage. Is it [148] not a fact that in deciding whether the upstream river boat will have to go completely out of the channel to the east side in making this passage will depend upon the position of the downstream ocean-going boat in the channel?

“A. A downstream ocean boat can go down the center of the channel and there would still be room on either side of him for a steamer to pass.”

Did you so testify?

(Testimony of N. W. Stayton.)

A. Certainly. He has got 300 feet; that is, you might say, 250 feet anyhow on either side of him and still stay in the 35-foot contour.

Q. And on the top of page 40, I will ask you whether you testified—I am only reading part of an answer—“He” (that is, the ocean-going steamer)—“He tries to keep in the center of the channel as near as he can, and there would still be room in the channel for an upcoming vessel to pass.” That is true, isn’t it? A. Yes.

Q. Now, Captain, let’s get back to this wind a bit. These Western Transportation Company towboats tow these paper barges winter and summer, all the time, don’t they?

A. I don’t know anything about their custom.

Q. Well, don’t you meet them on the river at all times?

A. I meet them, yes. I meet them, but I don’t know their customs.

Q. Don’t you know they are towing barges from Camas in the winter as well as in the summer?

A. I see all kinds of towboats towing barges and such like all the time, but I don’t pay any attention as to whose boats they [149] are in particular.

Q. Well, do you think that when there is a 40-mile wind blowing on the river—that is quite a little storm—that these towboats and barges lay up or continue to navigate?

A. Well, I don’t know. I don’t think there would be many boats towing barges of that class around

(Testimony of N. W. Stayton.)

and made fast to them in a 40-mile breeze on the river.

Q. Well, how much of a breeze can they navigate in?

A. Oh, I suppose a 20-mile wind on the river, why they would still be safe. I don't think they would kick up such a swell but what they could make fast to it. But a 40-mile breeze is a good, strong breeze.

Q. Then you wouldn't consider a 10-mile breeze any particular handicap to them, would you?

A. I wouldn't only just where they have to tow across what they call an abeam wind, striking them from one side or the other.

Q. Would a 10-mile wind make them hard to handle?

A. It would to a certain extent. It would depend upon just exactly what they wanted to do with them, you know; if they could keep going with good steerageway, that way they could hold up to the wind, and it wouldn't be so bad that way, but then when they stopped, with a 10-mile breeze it is quite a little breeze to try to handle anything 300 feet ahead of your rudder, like one of those little river boats have got.

Q. Captain Stayton, do you mean to imply they are a menace to navigation? [150]

A. They are not a menace to navigation, certainly not. A tugboat is not a menace to navigation as long as they are not directly right within the

(Testimony of N. W. Stayton.)

path of a ship. If a ship has got clearance on either side of them I wouldn't consider they was a menace to him.

Q. Wouldn't you say that if they can't control themselves in a narrow channel and they slide around in a ten-mile breeze that they were a menace to navigation?

A. I couldn't say that they were a menace to navigation; no, sir.

Q. All right. Now, you tow boats all the way up through the harbor of Portland, don't you?

A. Yes, sir.

Q. You have towed them many times, haven't you? A. You bet I have; you bet.

Q. Barges and everything else, haven't you?

A. Yes, sir.

Q. How wide is the river in the harbor at Portland?

A. From bank to bank most of the way, from one shore to the other.

Q. I say how wide is it?

A. How wide is it?

Q. Yes.

A. I don't think there is a place that is less than a thousand feet, with the exception of down here—between the Broadway Bridge and the Steel Bridge.

Q. That is what I was thinking of. How wide is it at the Steel Bridge? [151]

(Testimony of N. W. Stayton.)

A. Well, it is around 840—no——

Q. There is quite a bend there, too?

A. I think the full width of the river is 840 feet.

Q. Quite a bend in the river, there, too, isn't there?

A. Well, the bend comes above the Steel Bridge.

Q. Well, don't tugs and tows customarily pass ships port to port here in the river?

A. Not necessarily; no, sir.

Q. I say don't they usually? A. No, sir.

Q. You mean they disobey the Pilot Rules?

A. Sir?

Q. Do they disobey the Pilot Rules?

A. Well, tugboats, they pass through the draws where they have to, such as the Steel Bridge, but where they can go underneath a bridge, like when the water is low enough, like the Burnside Bridge or the Broadway Bridge, they generally go under either one of the side spans. They try to avoid the channel—the draw span—leave that in the clear. The Steel Bridge, they can't go under that.

Q. Were you a river towboat man for many years? A. Me?

Q. Yes. A. Yes, sir.

Q. In fact, most of the pilots in your Association—do you belong [152] to the Columbia River Pilots Association? A. I do.

Q. And most of them are graduates from the towboat business, aren't they?

(Testimony of N. W. Stayton.)

A. About two-thirds of them, I would say.

Q. And you are one of that class?

A. I am; towboats and passenger boats and such like.

Q. Do you have the idea that the river steamboats and these tugs and tows are not bound by the Pilot Rules?

A. Not bound by Pilot Rules?

Q. Yes.

A. Well, they are bound by Pilot Rules the same as any other vessel now. They have got to navigate.

Q. What do you mean by "now"? Weren't they always?

A. No, these diesel tugs were not at one time.

Q. Well, do you have the idea that it is sort of a custom and understood on the river that the tugs and tows are not going to be bound by the rules?

A. Why certainly they are bound by the rules now. There is a new ruling coming out.

Q. Now, you testified in a case before Judge Fee not so very long ago in which we were interested, called the Siranger case, didn't you?

A. Yes, sir.

Q. Didn't you testify there that the tugs, river boats, and tows didn't feel bound by the rules to blow passing whistles? [153]

A. I did, and at that time they were not. The ruling has been changed since then. .

(Testimony of N. W. Stayton.)

Q. What time was that?

A. Well, I don't remember just when that went into effect. It has been only a short time.

Q. I want you before this trial is over to show me any change that has been made in the Pilot Rules about blowing passing whistles in the last five years, ten years.

A. I didn't say there was any change made in the passing whistles or anything of the kind. I said that these little diesel boats didn't come under the Inspection Service, and I think that is—the same thing—the statement I made in the Siranger case.

Q. I will have to look up the Siranger case and see.

A. In that case, Mr. Wood, the small boat was censored, but the Inspectors had no jurisdiction over him.

Q. Now, this dike that you have talked about along the Sauvie's Island shore there on the right-hand side is a dike built by the United States Government Engineers, isn't it?

A. I think it was. It was there before I come here.

Q. Don't you know it is a United States Engineers dike? A. I never looked it up.

Q. It is a riprap "L" on the bank, isn't it?

A. It is similar to some of the dikes that they did build. I don't know whether the City of Portland built it or whether the United States Engineers. [154]

(Testimony of N. W. Stayton.)

Q. Isn't it in the nature of a riprapping along the bank to protect the bank from washing?

A. I don't know whether that was built to protect the bank or whether that was built for a channel improvement.

Q. It is not a dike that sticks——

A. (Continuing) There is one on both sides of the river.

Q. It is not a dike that sticks out into the channel, is it?

A. Not what they call a spur dike, no.

Q. It is one that runs along parallel and close to the bank?

A. It runs along parallel with the bank with the exception of one place down in there below the range, it jogs out and comes out there probably a hundred feet further and then steps back and follows the contour of the bank along.

Q. Now, do you consider that this custom, which you say is so well known, overrides the Pilot Rules?

A. What custom is that you have reference to?

Q. The custom you testified to, the only one you have testified to.

A. I don't understand you.

Q. Well, I asked you whether you consider that this custom that you testified about overrides the Pilot Rules, overrides the law.

A. I think I have testified to two or three things, here.

(Testimony of N. W. Stayton.)

Q. I mean the custom that you testified to, that you say is well known to all river men, for tugs and tows to take the left-hand side coming up the river. That is the custom I am talking about. Do you consider that that custom overrides the law?

[155]

A. I think in the line of safety and practicability that we can get away—go away from the Pilot Rules. The Pilot Rules allows us that much leeway.

Q. That is a custom which the pilots have established among themselves, is it?

A. No, sir.

Q. Who has established it?

A. I don't know who established it. The pilots had nothing to do with it.

Q. Who has established it?

A. I don't know who established it. It was here when I first came here.

Q. Is there any official ruling by the Steamboat Inspectors permitting it, vessels passing to the left on Post Office Bar?

A. There is nothing by the—ruling by the Steamboat Inspectors that I know of that objects to it.

Q. Well, that is hardly an answer to my question. I want to know whether any official ruling has ever given sanction to it.

A. Well, now, I don't know that.

(Testimony of N. W. Stayton.)

Mr. Young: Pardon me. You are confining this question, now, to lights, are you, Mr. Wood?

Mr. Wood: Not at all. I am talking about the custom to pass to the left.

Q. What is the purpose of the forward range light on a boat? A. Sir? [156]

(The last question was read by the reporter.)

A. It is to line up with the mast light to—so as you can get the general direction of the vessel more clearly.

Q. You mean so you can get the general direction of the approaching ship more clearly, don't you?

A. No, sir. What would a range light have to do—if you had a range light aboard your vessel, what would a range light have to do with you approaching another vessel?

Q. Isn't the forward range light on a boat there for the purpose of indicating to the approaching ship the angle at which your boat is approaching?

A. It is for the approaching ship to tell the way your boat is approaching.

Q. That is what I mean, too. So that if a forward range light on your boat is obscured the boat that is approaching you cannot tell the angle of your approach as easily as if that light were lit, can it? A. Yes, sir.

Mr. Wood: That is all.

(Testimony of N. W. Stayton.)

Redirect Examination

By Mr. Young:

Q. Will you explain that last answer, please?

A. They have your side lights. Your side lights always show from straight ahead. They can see both side lights and the mast light, which a ship doesn't have to carry a range light unless [157] she is over 150 feet in length, and if she has got two side lights and a mast light why you can tell what direction she is going, if you can see both the side lights and the mast light.

Q. Captain, is an ocean-going ship subject to slide-slipping in the river the same as a river boat?

A. Side-slip?

Q. Side-slipping. Is the ocean-going ship subject to side-slipping as a river boat is?

A. Well, it depends upon how the construction and the draft of them. They do to a certain extent, too. Now, a vessel like an oil tank steamer, when they leave the dock up here they have a whole lot of slip to them, bow slip, because they are a good bit similar to a towboat towing a tow. They have no draft forward and they have about a 17- or 18-foot to 20-foot draft aft, standing right up on the end, and they have a big slip to them.

Q. Are you familiar with the steamer Pennsylvanian?

A. Yes, sir.

Q. Is that ship built in the manner that you have indicated the oil barges to be built, the oil boats to be built?

A. No, sir.

(Testimony of N. W. Stayton.)

Q. Well, is a ship such as the Pennsylvanian subject to side-slipping in the same manner as a river-going boat would be?

A. Not so much so; no, sir.

Q. And the reason for that is what?

A. Well, they have more draft in the water.

[158]

Q. Does the amount of side-slipping depend to some degree upon the amount of draft in the water?

A. Yes, sir.

Q. Counsel was inquiring as to whether or not steamers are required to slow down when passing towboats and I think you stated there was no requirement of that nature. I will ask you, however, is there any practice of any sort that you know of with regard to ocean-going ships slowing down when they meet a river boat?

A. Well, we have been requested once—every once in a while as some vessel will go by that goes down and causes quite a disturbance, and then we will get quite a number of letters from different ones asking us to slow down, asking if we will use a little bit more precaution in slowing down and passing vessels, our tows, but there is no law, speed limit, that I have ever heard of or know of after you leave the city limits of Portland until you arrive in the harbor of Astoria.

Mr. Young: That is all, Captain. That is all.

(Witness excused.) [159]

CHARLES W. ACKERMAN,

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Mr. Wood: If your Honor please, I gave notice that I may want to ask Captain Stayton about his testimony in that Siranger case. I want to take a moment to look at it. I don't want him to leave.

Direct Examination

By Mr. Young:

Q. What is your occupation?

A. Ship pilot.

Q. And how long have you been a ship pilot?

A. Since 1927.

Q. In what territory?

A. Columbia River.

Q. And what licenses do you hold?

A. Columbia River and tributaries, Ilwaco, The Dalles, and Oregon City.

Q. And have you held those licenses in the time that you have just indicated? A. Yes.

Q. Now, prior to 1927 what work were you engaged in? A. Well, on towboats.

Q. On the river? A. Yes, the river.

Q. The Willamette and Columbia? [160]

A. Willamette and Columbia rivers.

Q. And how far back had you been working on towboats? A. Since 1908.

Q. Then do I understand that since 1908 in some capacity or other you have been connected with the river boats or boats of some sort on either the Willamette or Columbia rivers?

(Testimony of Charles W. Ackerman.)

A. Yes, sir.

Q. In your work as a Columbia River pilot, do you have occasion to pilot any boats other than ocean-going ships? A. Yes.

Q. Sometimes river boats?

A. Yes. Well, yes. I will say once this year.

Q. Are you familiar with what is known as Post Office Bar near the mouth of the Willamette River? A. Yes, sir.

Q. And during the time that you have been on the Willamette River, what occasion have you had to go past Post Office Bar?

A. What occasions?

Q. Yes. How frequently?

A. Well, right now only two or three times a week now.

Q. And in the past how frequently?

A. Well, once every twenty-four hours.

Q. Captain, I will ask you to state whether or not in your opinion it is safe or practicable for river boats to go up or down the Willamette River in the vicinity of Post Office Bar by [161] following the west side of the river?

A. The west side? It is not practical, to my opinion, or safe.

Q. Will you explain your answer?

A. Well, if a towboat is coming up the west side and a ship coming down—we will take a log boat. That was the last one I was on.

Mr. Wood: I object to any testimony about log

(Testimony of Charles W. Ackerman.)

boats, your Honor. Log boats tow log rafts on a hauser at least 600 feet long trailing behind them, and the logs are perhaps sixty or a hundred feet back of the hauser. It is a long tow.

The Court: Ask the question again.

Mr. Young: Read the last question again.

The Court: Ask the question again.

Mr. Young: I asked the witness to explain his answer when he stated——

The Court: It is not safe or practicable. His answer having been it is not safe or practicable.

Mr. Young: Yes. I asked him to explain the answer, and the objection of counsel is to the witness's answer and not to my question.

The Court: Start it again, witness.

A. All right on the towboat business?

Mr. Young: Would your Honor mind having the reporter read the original question, please, and the answer?

The Court: Oh, he can go ahead. You are supposed to explain [162] why you think it isn't safe or practical.

A. Well, that towboat coming up there from any place along there, going around Gillihan's, the point above Gillihan's, if you have got two rafts on a tow line and ship comes down——

The Court: Mr. Wood wants to know what rafts have got to do with——

A. They are strung out a tow line.

Mr. Young: Q. Captain, will you confine your

(Testimony of Charles W. Ackerman.)

answer to the operation of river towboats which are pushing barges?

A. Well, even that, it is not practical to stay on the west side.

Q. And why?

A. On account of making—staying in that bight too far. They have to stay in too close. If there is any wind comes up to push them ashore, if a ship passes, and her back swell, you would call it, I guess, have more tendency of driving in that much further, and if those should happen to be awash or something like that, you—and you would go on there—you would punch holes or anything else in the barges, and from old time customs we are in the habit of figuring on them being on the east side of the river, towboats coming up and down.

Q. Now, the explanation which you have given, do I understand that that applies to towboats which are pushing barges? A. Yes.

Q. Now, do I understand that this custom which you have mentioned [163] in connection with your answer has existed for a long time?

A. Well, to my knowledge ever since I have been steamboating.

Q. And that runs back to 1908, does it?

A. 1908.

Q. Has that custom been a uniform custom?

A. Yes, sir.

Q. Now, is that custom confined to any particular kind of river boat, or is it general as to all?

A. As to all.

(Testimony of Charles W. Ackerman.)

Q. And has that custom confined to river boats that might be pushing barges as distinguished from river boats that are pulling log rafts?

A. No, to all boats.

Q. It applies to all river boats? A. Yes.

Q. To what extent would the presence of more than two boats, which might be attempting to pass Post Office Bar, be a factor in entering into the matter of whether it be safe or practical for a river boat to proceed upstream on the west side?

Mr. Wood: I object to that question, your Honor. It has no relation to the present case.

The Court: Sustained.

Mr. Young: If the Court please, we are discussing here a matter of a custom which is based upon factors of safety. The witness has testified that this is a general practice that has [164] existed, so far far as he knows, back as far as 1908——

The Court: And he says it is universal to all situations.

Mr. Young: To all situations, yes.

The Court: He does not need to go any further than that.

Mr. Young: Very well.

Q. Now, Captain, the danger which you were mentioning of the river boats colliding with the dike, as I understand it, is the one on the west side of the river? A. Yes, sir.

Q. And if the river boat is travelling up the east side instead of the west side, are there any of the

(Testimony of Charles W. Ackerman.)

dangers that you have mentioned then present to the river boat?

A. No, there is not. Of course, away at the upper end on the east side there is a little jetty sticks out up there, but that is on one spot, and the other jetty on the west side is, oh, I should say at least four thousand feet long.

Q. Now, to what extent is a wind a factor in regard to the matter of whether it is safe or practicable for river boats to go up the west side?

A. Well, an east wind—you have got to set off on account of the east wind blowing you toward the shore.

Q. What is the prevailing wind when there is one in that territory?

A. The wind that bothers you is an east wind.

Q. What wind generally prevails in that territory when there is a wind? [165]

A. Easterly.

Q. That wind, does that vary in velocity from time to time? A. Oh, yes.

Q. And how suddenly does the velocity of that wind change?

A. Well, I couldn't answer that.

Q. Well, does it change suddenly, or not?

A. Yes, at times.

Q. What is the effect of the easterly wind upon, or what would be the effect of an easterly wind upon a river boat proceeding upstream on the west side pushing barges ahead?

(Testimony of Charles W. Ackerman.)

A. Well, it would be the slippage, slipping sideways. You would have to hold out, and—meaning you would have to stay closer to the channel than you would on the other side.

Q. What do you mean by the “slippage”?

A. Well, the wind blows some ways light barges. They are light, even loaded barges, as far as that goes, with a house on, or more like a sailboat in front of you trying to steer it.

Q. Is an ocean-going ship subject to slippage in the same manner that a river boat is?

A. No, not to the same extent. No ways near.

Q. Why is that?

A. On account of the draft of the vessel.

Q. Now, you mentioned the matter of swell from an ocean-going ship. To what extent would the swell, or displacement swell, as it has been called, of an ocean-going ship proceeding downstream affect [166] a river boat which might be proceeding upstream on the west side of the river?

A. Well, the swell would—with a barge, we will say, you would—if she was making any swell at all you would have to slow down, and when you would slow down then the wind would be inclined to give that much more slippage, the less headway the more slippage. All right. Then when you would go to start up again, she would be going so lively you would have to head out straight across the river to get into the deep water again, and then if you did head out into deep water, another ship coming behind, I don't know where you would go.

(Testimony of Charles W. Ackerman.)

Q. Are you familiar with the term known as "kick water"? A. Yes, some.

Q. What does that mean?

A. Well, that is a current from the propeller.

Q. Does that current from the front of the propeller, would that have any effect upon the operation of a river boat going upstream on the west side at Post Office Bar? A. Yes, quite a bit.

Q. Will you explain your answer?

A. On account of the ship making that bend and swinging around there and a towboat coming up, that push water, we will say, from the propeller, the deeper it is the more current there is astern, there, and that hits your barges, will help you that much more to go towards—in the bight. [167]

Q. If the river boat were proceeding upstream on the east side of the river, would this displacement swell or kick water affect the river boat in the same manner? A. No.

Q. Why not?

A. Because the kick water would be going around in the bight, just the opposite from what you are.

Q. And what about the displacement swell?

A. Well, you would be further away from the vessel; that is, if she was going down the center of the channel you would be further away and you would stop. You would have more room when you go ahead, and still get out of the channel.

Q. How much room would you have to get out of the channel on the east side?

(Testimony of Charles W. Ackerman.)

A. Oh, on a 35-foot contour, they would have about four hundred feet along there.

Q. In other words, the easterly 400 feet of the river would be less than 35 feet in depth; is that right?

A. Yes.

Q. When you speak of a channel for ocean-going ships, what do you, as pilots, understand the channel to mean with regard to depth?

A. The deepest water.

Q. And that would be what in this instance?

A. Thirty-five feet.

Q. Would a river-going boat proceeding upstream on the west side [168] of the Willamette River opposite Post Office Bar be on the inside or the outside of the curve of the stream?

A. It would be on the long side—or the outside of the curve.

Q. And to what extent would that have any effect upon this matter of side-slippage in proceeding around the curve on the outside?

A. Well, inclined to make you slide to the long side, to the right.

Q. Would that factor exist in case the river boat were proceeding up the east side?

A. Well, no—some—yes, to some extent, but no way near as much.

Q. With regard to the matter of the east wind, is there any protection which the river boat would have against the east wind if it is proceeding on the east side of the river instead of the west?

(Testimony of Charles W. Ackerman.)

A. Yes.

Q. What is that?

A. Well, there is a bank, there, and then willows all along the shore are just high enough to cut off the wind on the barges.

Q. Captain, are you familiar with Article 25 of the Pilot Rules with reference to steam vessels in narrow channels? A. Yes, sir.

Q. Is it your undertsanding that that Article 25 gives to the steam vessel, at least an ocean-going ship, the absolute right under all circumstances to insist on port to port passages when going down past Post Office Bar? A. No. [169]

Q. Will you explain your answer?

A. Well, when safe and practical, it does, but if there is other reasons to make it safer to pass starboard to starboard, then the practical thing is the safest, which—which we are cautioned to do and even rules give you that leeway.

Q. And do those rules exist in your opinion in the case of a passing of a river boat by an ocean-going ship at Post Office Bar? A. Yes, sir.

Q. Now, if you were piloting an ocean-going vessel downstream in the channel of the Willamette past Post Office Bar in the nighttime and you saw approaching on the east side of the river two mast lights with either a red or green side light, together with at least two white lights forward and near the water's edge, what would those lights indicate to you as to the identity of the approaching vessel?

(Testimony of Charles W. Ackerman.)

A. Well, I would figure the towboat with barges alongside or ahead of it.

Q. And is that generally known by pilots in the Columbia River area? A. Well, yes.

Q. Is the placing of white lights on the forward ends of barges which are either on the nose of a towboat or on one or the other sides, a practice with regard to lights? A. Yes.

Q. How long has that practice existed, to your knowledge? A. Well, ever since 1908.

Q. Has that been an uniform practice with regard to the manner of [170] lighting barges which are being towed by river boats?

A. Yes, sir.

Q. To what extent has this practice that you mentioned of river boats using the east side of the river at Post Office Bar instead of the west side, to what extent is that practice known by pilots in this area?

A. The pilots—I wouldn't know. All I know is to my knowledge as a pilot since 1927, and as a towboat man since 1908.

Q. Is the custom and practice generally known, do you know? A. Yes, it is.

Q. How frequently, to your observation, is the Willamette River in the vicinity of Post Office Bar used by towboats and barges?

A. I think there are more towboats will pass between Multnomah Channel in the Willamette and the mouth of the Columbia River than any other given point on the Columbia or Willamette rivers.

(Testimony of Charles W. Ackerman.)

Q. And to what extent does it happen that there may be more than one towboat there with barges at the same time?

A. Well, on account of that being such a point where there are so many must pass.

Q. And these factors of safety and practicality that you have referred to, do they apply with increasing importance in cases depending upon the number of boats that may be there at any particular time?

A. Yes, sir.

Q. The greater the number of boats the greater the importance of [171] applying these safety factors of safety which you refer to?

A. Yes, sir.

Q. What is the usual speed of ocean-going ships travelling downstream past Post Office Bar?

A. Well, that depends on the ship and draft. I would say from six knots to whatever speed they want, twelve knots.

Mr. Young: You may cross examine.

The Court: We will take the morning recess here, but I want to ask you, first, Mr. Wood, do you have expert testimony along this line? I suppose you have.

Mr. Wood: Yes.

The Court: How many do you expect to call on a side?

Mr. Young: I have two more, your Honor.

The Court: Well, our rules provide for three, and it seems to me in the hot weather two would be enough. This is your second man.

(Testimony of Charles W. Ackerman.)

Mr. Young: Our local rules limit them to three on a side, your Honor, and we always limit them to three in condemnation suit. I mentioned in the opening statement yesterday that I would have five or six——

The Court: I know you did, but am I estopped because I didn't bring up the point then?

Mr. Young: I would say that I was possibly misled by the failure of anyone to make a comment about it. I did not understand that in an admiralty case the reference has an application. I think that has been—— [172]

The Court: All right. You call six. We might as well stay here all month.

Mr. Young: I don't want to take up the time of the Court unnecessarily.

The Court: Mr. Wood.

(Whereupon at 9:50 a recess was taken.)

Cross Examination

By Mr. Wood:

Q. Captain Ackerman, you were a towboat man from 1908 to 1927, weren't you?

A. Yes, sir.

Q. And from that you went into the piloting, did you? A. Yes, sir.

Q. Are you a member of the Columbia River Pilots Association? A. Yes, sir.

Q. Most of you pilots in that association have graduated from the towboat business into the pilot business, haven't you?

(Testimony of Charles W. Ackerman.)

A. Yes, sir; the majority.

Q. You, nearly all of you are old towboat men, aren't you? A. Yes, sir.

Q. Now, you spoke of this old-time custom for towboats there to come up on the east shore. How did that custom originate, do you know?

A. I haven't any idea.

Q. Was it something that just sort of grew up among the pilots [173] and towboat men?

A. No, from experience I think it grew up. Somebody has had accidents over and seen it wasn't practical or safe around there.

Q. It just grew up in the olden days between the towboat men and the steamers.

A. Just as a guess I would imagine so.

Q. It has never been recognized by the Steamboat Inspectors, has it?

A. Well, not to my knowledge.

Q. Well, do you know that they have condemned towboats and found their pilots guilty for coming up there on the left-hand side?

A. Well, I heard Captain Reed lost his license for one day. That is the only case I know of. .

Q. That is the only one you know?

A. That is the only one I know, yes.

Q. Do you know of the case of the Modoc and the Twin Point having a collision?

A. Twin Point. I never heard of that boat. That wasn't on the Columbia River. There has never been a boat by that name.

(Testimony of Charles W. Ackerman.)

Q. Well, these were small boats.

A. It must have been.

Q. Now, these stern-wheel river boats, such as the Barry K, handle well, don't they, handle easily?

A. Barry K? I never was on her.

Q. What?

A. I was never on the Barry K. [174]

Q. I am speaking of these stern-wheel river steamers, generally, as a class.

A. Towboats handle well, yes.

Q. The fact that they are stern-wheelers and the position of their rudders in relation to their wheel makes them handle readily and quickly, doesn't it? A. Yes, they do.

Q. And many of them in fact have monkey rudders, don't they? A. Yes.

Q. Do you know whether the Barry K has monkey rudders? A. Yes, she has.

Q. That means an additional set of rudders, does it not?

A. Yes. I will take that back. They were on the Barry K when she was called the Portland; used to be the Lewiston.

Q. Inasmuch as I have referred to them, explain what monkey rudders are.

A. Monkey rudders are from one to four on the river, astern of the wheel to help when going ahead, to help steer, and they are logically built for the purpose of towboats, to help steer before it really gets headway, to help steer.

(Testimony of Charles W. Ackerman.)

Q. This type of Columbia River towboat, stern-wheel boat, has been especially designed and built because it is a powerful, well-handled boat to handle tows on this river. Isn't that a fact? I am speaking of them as a class. A. Yes. [175]

Q. Now, have you handled tows similar to this one, the Barry K? A. Yes, sir.

Q. Do you know what kind of a tow she had this night?

A. Well, I have an idea what kind.

Q. What is your idea? I just want to see if you are right.

A. Well, just one of those steel barges with about a 10- or 15-foot house on, drawing about three or four feet of water, flat bottom. I think that—

Q. And loaded with paper?

A. Well, that is why she would be adraft. She would only be drawing maybe eight, ten, or a foot if she was light.

Mr. Young: If the Court please, I think if this question is to be asked this witness, the witness is entitled to know the testimony already in the record as to what the dimensions of the Barry K and her barges were.

Mr. Wood: I do, too, if he wants to know. I think he does know.

The Court: You state them, Mr. Young.

Mr. Young: The evidence in the case, your Honor, shows that the Barry K, itself, was about 165 feet long over-all, that she had one barge on

(Testimony of Charles W. Ackerman.)

her nose and another barge on her forward port side. The barges drew between four and five feet of water each. They had deck houses extending their full length, which were approximately twenty feet above the level of the water.

The Court: Q. Captain, are you listening?

A. Yes, sir. [176]

The Court: This is all for you.

Mr. Young: And the Barry K herself drew two feet eight inches. Her own deckhouse extended most of the length of the Barry K's hull on the lower deck and the superstructure ran up as high as the top of the pilot house, which was about 34 feet above the water's level.

Mr. Wood: Q. Captain Ackerman, I want to satisfy my exacting friend, here, and give you every benefit of all of the information possible. There is a photograph of the way——

The Court: I think you gentlemen every now and then get into your heads that this is a jury over here. I think maybe we would get along here if we would set them some place else.

Mr. Wood: Very well, your Honor.

Q. I want to know, with a tow made up like that, how much effect a ten-mile breeze would have from the east?

A. It would have quite an effect—that is, if it was a beam wind.

Q. How much would you have to hold the tow out sort of diagonally into the channel with a boat

(Testimony of Charles W. Ackerman.)

of the power of the Barry K to conteract the breeze?

A. Well, it would take very near 40 to keep her a straight line, or 45 degrees practically to keep her on a straight course.

Q. You would have to hold it out about 45 degrees?

A. Yes, to keep her on a straight course.

Q. But if you held her out 45 degrees you could keep her out there all right? [177]

A. If you didn't have to slow down you could, I imagine.

Q. Suppose you had to slow down. You would just increase the angle and still hold her off the bank?

A. Increase that angle quite a bit, practically go head on in the wind.

Q. And if you did that, you could hold her indefinitely off the shore?

A. I wouldn't say that indefinitely. That is from my experience. You would try it that way and see what you could do.

Q. Well, Captain Ackerman,—

A. The wind may increase by that time.

Q. I am talking about a ten-mile breeze.

A. Oh, it is going to stay that way.

Q. Now, the more you quartered her into the wind, the more you would head into the wind and the less resistance you would expose to the wind. That is true, isn't it?

A. Yes, that is true.

(Testimony of Charles W. Ackerman.)

Q. Now, could you slow that boat down and head into the wind and remain there as long as you wanted to without going into that bank?

A. Well, no.

Q. Why not?

A. Because on account of you would be going along there. You never heard—saw a wind that will stay indefinitely ten miles. There will be pockets,—like an airplane or anything else, there is pockets. The same thing here. [178]

Q. Let me ask you this: If the wind increased a little in the pocket, you could speed up your boat a little and hold her off the bank, wouldn't you?

A. I would hate to bet any money that I could hold her in one spot.

Q. I didn't say one spot. I say keep her off the right-hand bank.

A. Oh, yes; by increasing my speed and one thing and another, yes.

Q. In fact, the testimony is that the Barry K was pushing this tow up against the current, one-mile current, at six miles an hour, so that would indicate she had considerable power to handle her tow, would it not?

A. Yes, she had power for that.

Q. Now, if the Barry K and her tow, as there shown, had chosen to come up on the right-hand side under the conditions as they have been described of a ten-mile breeze from the east and a one-mile downstream current, how close could she

(Testimony of Charles W. Ackerman.)

have kept in to the right-hand side and still proceeded up the river safely?

A. Well, we will say two hundred feet. That is providing she don't have to stop or anything like that; that is just keep a-going and hold her out there.

Q. Now, what part of her do you mean when you say two hundred feet?

A. Well, I would say—be prepared for safety's sake—I would say the stern, or say even the wheel-house, two hundred feet out, or three hundred feet, stern about two hundred feet off.

Q. Stern about two hundred feet off?

A. Yes. [179]

Q. Now, how much clear water would that leave on her port side for a downcoming ocean steamer to pass in the deep channel?

A. How much—on her port side?

Q. Yes.

A. She is coming up now. She is on the Swan Island side, or I mean the Sauvie's Island side. That's right. That is what you are saying.

Q. Yes.

A. To leave the ship come down her port side that would allow her practically the whole channel, five or six hundred feet.

Q. Would leave the downcoming ship a whole channel?

A. Yes, it would. A 35-foot channel.

Q. So if the tug and tow could proceed safely

(Testimony of Charles W. Ackerman.)

in the way you have described, keeping her stern two hundred feet off, and the ship had almost the whole channel to come down in on the tow's port side, they could have made a safe and practicable passage, couldn't they?

A. This is nighttime or daytime?

Q. You understood this was at nighttime.

A. No, I would hate to be coming down there with a ship and just see a green side light only across there. I would begin wondering what he was trying to do. That is if I am on the ship. And if I am on the towboat coming down there, you are two hundred feet off, and that wind blowing, you don't know whether he has to stop on account of breaking or parting lines and one thing and another, and if you stop a minute or two you are going to drift, [180] the barge in front is going to carry away, and you can't keep her headed in while you are stopped. That is practically impossible.

Q. I thought we agreed a moment ago you could slow down——

A. You stop time and time again. I will venture to say that eighty per cent of the time you stop with a towboat and barges if there is any swell to amount to anything on the ship with a towboat, on account of parting lines.

The Court: What is that expression he uses?

A. Parting lines.

The Court: You mean breaking?

(Testimony of Charles W. Ackerman.)

Mr. Wood: He means breaking the lines, yes.

Q. Would there be an occasion for the tugboat to stop there? A. There may, yes.

Q. Why?

A. On account of the swells from the ship.

Q. Well, if the ship does her supposed duty she slows down, herself, to avoid making a swell, doesn't she? A. Well,—

Q. Answer that question. Isn't that the rule and practice? If the steamer has reason to anticipate that her swell is going to injure a tow, isn't the practice for the steamer to slow down while passing? A. Not always.

Q. Isn't it the practice?

A. It all depends on what your ship is. Now, some ships going [181] at six knots, which you don't have to go slower than that,—there is no ruling to that effect. All right. Keep your own steerage. Some ships going slow have a swell or suction, more so; others can go twelve knots and no more swell than one going six. So you can't go according to that.

Q. Well, I don't think you have answered my question. Perhaps you have tried to. I asked you this: If a steamer is going down the river with such draft and speed that she is throwing a displacement wave which may part the lines on a tug and tow she is passing, isn't the practice for the steamer to slow down and avoid that contingency?

A. All right. We will say she does slow down and still there is a swell. Then what?

(Testimony of Charles W. Ackerman.)

Q. You are not answering my question.

A. I think I am.

Q. Isn't it the practice for them to slow down?

A. To slow down, yes; to slow down.

The Court: As old towboat men, these pilots are no doubt especially considerate that they have now become deep draft pilots.

Mr. Wood: Yes, no doubt they are. They all do it.

Q. Now, Captain Ackerman, what is it about the Barry K and her tows that makes them susceptible to this wind resistance?

A. They are all that way with the same tow—that is, practically speaking, the average towboat. Some a little more than others.

Q. What is it that makes them so? [182]

A. On account of the draft.

Q. And does the kind of barges they tow have anything to do with it?

A. Yes, the types of barges have, yes.

Q. What is it?

A. If they are a flat-bottomed barge, they are inclined to slide more.

Q. You will admit with me, won't you, that the channel here at this place we are talking about is 800 feet wide and 30 feet deep? A. Yes.

Q. And you know, of course, the law requires vessels to pass port to port in narrow channels where it is safe and practicable to do so? You know that? A. Yes, sir.

(Testimony of Charles W. Ackerman.)

Q. Now, do you mean by your testimony that the Western Transportation Company places afloat on these waters——

A. What?

Q. Do you mean that the Western Transportation Company puts afloat on these waters a tug and her tow so constructed and of such power that she can't obey that rule in an 800-foot wide channel? Is that what you mean?

A. In an 800-foot wide channel?

Q. Yes.

A. Yes, they can obey it in 800 feet; yes.

Q. That is what we have, here.

A. Yes, they can do it in that whole channel; they can keep her [183] under control.

Mr. Wood: I think that is pretty near the end of this case, it seems to me.

Q. I mean they can do it safely?

A. You are using the whole 800 feet, you understand.

Q. No, using the whole 800 feet.

A. Yes.

Q. If they do that, there is no reason why they can't pass port to port safely and practically, is there?

A. Yes, you cannot pass safely. It is not practical and not safe.

Q. On account of the character of the construction of the tow?

A. Yes.

Q. You will admit, won't you, that these tugs and tows, like this one, are easier to handle than an ocean steamer 420 feet long, won't you?

(Testimony of Charles W. Ackerman.)

A. Well, it depends on the quarters you are in. As far as with no headway on, I will say a ship is easier to handle in a wind, the same wind, understand, ten miles.

Q. Well, I am not talking about "no headway on." We are talking about general navigation.

A. If you keep a-going full speed?

Q. Or half speed. Isn't the tug and tow more maneuverable than a heavy, 420-foot-long ocean steamer?

A. Yes; at half speed, yes.

Q. And isn't it also true that a boat going upstream against a [184] current is always more maneuverable than one coming downstream with the current?

A. Yes, sir.

Q. That is admitted by all, isn't it?

A. Yes, I think so.

Q. And it is your idea, then, that a partially laden ocean steamer like the *Pennsylvanian* coming down through that channel and seeing the red light of a towboat coming up a mile away should elect to pass to the towboat's left and go into these dangers that you describe along the dike with the current behind them. Is that what you think the steamer should do?

A. No. The steamer should stay in the channel. That is what they dredge the channel for. That is where she should stay, if possible.

Q. What part of the channel?

A. The deepest part.

Q. What? A. The deepest part.

(Testimony of Charles W. Ackerman.)

Q. You will admit, won't you, that this 30-foot channel is the same depth clear across?

A. I know, but why did they dig a 35-foot channel, if not use it?

Q. Isn't the 30-foot channel the same depth clear across?

A. Well, the 30-foot channel is 30 foot. It should be.

Q. Clear across. Which part of that channel should the ship keep which is coming down? [185]

A. Well, I would say to get exactly the middle of that channel he should stay to Sauvie's Island side, favor Sauvie's Island side.

Q. You think that even though she sees the red light of a towboat coming up a mile below her, that she should elect to take the left-hand side, do you, in the middle of the night?

A. Yes, the main—of the channel, now, you are taking the whole thing in.

Q. And what would you expect the up-coming towboat to do?

A. That would be giving the ship the middle of the whole channel.

Q. What would the tugboat be supposed to be doing?

A. You are expecting him to be hugging the east side.

Q. Of what? A. Of the river, there.

Q. The east bank? A. The east bank, yes.

Q. Under the protection of those willows?

(Testimony of Charles W. Ackerman.)

A. Yes, sir.

Q. And completely out of the ship channel?

A. Nearly so. We don't need the whole ship channel to get by a ship.

Q. What do you mean? Do you mean that the tug and tow should be partly out in the shoal water or partly in the deep ship channel?

A. They try to hold in the shoal water.

The Court: What water was the *Pennsylvanian* drawing?

Mr. Wood: The *Pennsylvanian*? [186]

The Court: Yes.

Mr. Wood: I think she was drawing nineteen feet. That will appear later. Somewhere around there, eighteen or nineteen.

Mr. Young: I think, your Honor, the evidence will also show, however, that the *Pennsylvanian* was carrying only partial cargo at the time.

Mr. Wood: That is true.

Q. How close does a towboat have to get into these willows to receive any shelter from them as against the wind?

A. Well, you will receive some two or three hundred feet away, some resistance from the wind. The closer, the more protection.

Q. I know, but I want to know the outside limit. How far out from those willows does she have to get before she loses all of their protection?

A. You will have to get somebody more technical terms than I have got to figure that out.

(Testimony of Charles W. Ackerman.)

Q. From your experience you don't know?

A. From my experience I would say three hundred feet.

Q. If she was three hundred feet out from those willows, she would be completely in the shoal water, wouldn't she?

A. In a 35-foot contour, yes, she would. I thought you were talking about thirty feet.

Q. If she were out anywhere in the dredged channel she would be getting the full force of that wind, no matter which side of the dredged channel she was on. Is that what you mean? [187]

A. No, no, I don't. There is always a little lee. The further we get away the less——

Q. All right. I will go back to the lights a minute. Do you regard the front range light of a steamer or a river boat as of any importance?

A. Well, I use them on ships, yes, but—the side light is the main thing.

Q. Well, let's confine ourselves to river boats. Does a forward range light have any importance on a river boat?

A. Well, yes, some, if you have got it where you can see it.

Q. What is it?

A. Well, it lines your—the center of your boat up.

Mr. Wood: I paused. I wanted your Honor to hear this.

The Court: Yes, sir.

(Testimony of Charles W. Ackerman.)

Mr. Wood: Q. The front range light, then, helps the opposing ship coming down to meet you to determine your course, does it not?

A. Yes.

Q. And the rules require a front range light for that purpose, don't they?

A. Well, if there is a barge ahead I don't know where you could put that thing to line up.

Q. Well, that is not the point. The rules require a front range light, do they not?

A. Yes. [188]

Q. And with a front range light on a boat, the approaching boat can determine the course of the one she is approaching much more exactly than she can by just looking at the other ship's side lights, can't she?

A. Yes. More accurately, yes.

Q. In fact, if all you see of an approaching ship is her red light and two vertical lights, you can't tell within ten points which way she is coming, can you?

A. Let's see. Now, wait. We are getting technical. We are getting down to points, now.

Q. Well, you are a technical pilot.

A. Seeing the red light, you say? Well, you could see the red light from any angle, up, from straight ahead, to ten points. You could be clear aft of the red light. But you can size up the tow and range things up a little bit with the tow if you have any local knowledge.

(Testimony of Charles W. Ackerman.)

Q. Well, I am not relying on the tow lights yet. It is a fact, isn't it, Captain, that the red and green lights of a ship, called sometimes the side lights, are supposed to show from dead ahead to two points abaft the beam? A. That's right.

Q. That is right, isn't it? And they are supposed to be screened so that they will not show across the bow of the ship they are on. That is right, is it not? A. That is right. [189]

Q. And the only arc that they will show through is an arc of ten points from dead ahead to two points abaft of the beam? A. Yes.

Q. That is right. So that if the Pennsylvanian in this case coming down saw the red light of the Barry K and her vertical towing lights and no front range light, she could not tell within ten points what the course of that approaching boat was, could she?

A. No, but it is up to the approaching ship to try to judge how far the ship is off the channel to the right or to the left, because they are coming obliquely to each other, which happens frequently.

Q. Now, the front range light which is required by the rules is for that very purpose, to enable the approaching ship to determine more exactly the course of the ship that she is approaching, is it not?

A. Yes, that is right.

Q. What? A. Yes. Right.

Q. Of course it is.

A. But, now could I say something?

Q. Yes.

(Testimony of Charles W. Ackerman.)

A. We will say that you had that light on this towboat. What good will it do the ship? You couldn't see it. It will just blind the pilot on the towboat. That is all it will do, because of the reflection from the barge back into his face. [190]

Q. I should suggest that he ought to raise it up so the other fellow can see it.

A. The Government rules that——

Q. You can raise it if you raise them both.

The Court: What did you say?

Mr. Wood: If your Honor please, the rules require these range lights to be so placed, one, the rear light, I believe it is, a certain height above the front light, and the witness has just been suggesting that they couldn't raise this front range light, and I say they could raise it. All they have to do is raise their rear range light. So long as they are in a proportionate height they comply with the rules. Isn't that right? A. Yes.

The Court: And that will be your claim, which you seriously make in this case?

Mr. Wood: We make a claim that the front range light, had it been lit and showing on the Barry K, would have enabled us more exactly to determine her course.

Mr. Young: If the Court please——

The Court: Wait a minute, if you please. And even though, as I understand, the custom is not at all to maintain a range light where there is a tow like this one that interfered with the vision?

(Testimony of Charles W. Ackerman.)

Mr. Wood: I have never heard until this moment that there was a custom not to maintain a range light, but the rules absolutely [191] require it.

Q. Now, is there a custom?

A. There is. I don't believe there is a towboat man in here or otherwise that has seen anything else in the Columbia River, and I am covering a lot of territory when I say that.

Q. You mean it is a practice not to maintain a range light?

A. To put it on each side of the barge, outside corners.

Q. I am talking about the range light.

A. That is what I mean. There would be so many lights you wouldn't know what to do with it.

Q. We all know what a range light is, don't we?

A. Yes.

Q. One required by the rules. Is it the practice of you towboat men not to keep a range light burning?

A. Sometimes, yes, we keep it burning, but it is no good to you.

Q. And sometimes you do not. Is that it?

A. Well, I—when it is hazy weather so a reflection from that light comes, I don't use it. I turn it out.

Q. Now, let's talk about the lights that were on the corners of these scows. They are kerosene lanterns, according to the testimony, hooked on to the

(Testimony of Charles W. Ackerman.)

corners of those scows, and you say that is in accordance with long-standing custom here in the river? A. Yes.

Q. Is there anything in the Pilot Rules or the Inspectors' Rules that justifies that? [192]

A. I don't know. I believe there is a ruling you must have a light on each outer corner of a barge. I believe there is something of that kind.

Q. You don't know what the rules are about that?

A. Well, not exact, no. I am sorry. I should know.

Q. Well, there is no use asking you that.

The Court: Maybe it is like our business. He would have to look it up.

Mr. Wood: Q. You will admit that ocean steamers pass in this place port to port and always have, will you not? A. Yes, they have.

Q. And when towboats with tows meet there, how do they pass?

A. They stay—they pass port to port on the east side of the channel.

Q. You mean completely out of the channel?

A. Well, or as nearly out as they can get. Now, I will have to go back to towboats to explain why they do that. Could I do that?

Q. You can explain anything if you want to.

A. Well, if you have a raft man coming down there and try to hold your side of the channel, which you say go down there——

(Testimony of Charles W. Ackerman.)

Q. Excuse me, Captain. I don't want to prolong this, and neither does the judge. We are not interested in rafts. A. All right. Skip it.

The Court: You might develop, though, how long up and down the river is this supposed dangerous area, there. Do you know what [193] I mean, "up and down the river"?

Mr. Wood: I shall be glad to have your Honor ask him any such questions as that.

The Court: You ask him. You are doing fine. We have heard a lot about the width of the river. Just consider that a special danger condition zone in there. What is the extent of it?

Mr. Wood: Q. How far up and down the river, Captain Ackerman, would you consider this hazardous area that you have described around Post Office Bar to continue?

A. Well, from the mouth of the river to about here (indicating). There is a slough coming right there to here (indicating). There they can spread out and there is more water on all sides from the mouth of the river up to that point.

Q. From the mouth of the river up to a place marked—— A. Multnomah Channel.

The Court: Just put your finger where the collision occurred.

Mr. Wood: Right there?

Mr. Erskine B. Wood: About two-thirds of the way into the area from the mouth of the river, would you say?

(Testimony of Charles W. Ackerman.)

Mr. Wood: Of course, the mouth of the river is away down here. He describes it as from the mouth of the river up to the place on the chart where Captain Reed marked the position of the Pennsylvanian when he first saw it.

A. That is West Multnomah Channel, there.

Mr. Wood: Yes, it is west of Multnomah Channel Entrance fixed white. [194]

The Court: Where, Mr. Young, according to your theory, do the towboat men begin to take to the left coming up the river?

Mr. Young: From the mouth of the river up to and beyond this bend in the stream.

The Court: Quite a few miles.

Mr. Young: It would probably be two miles to two miles and a half upstream, I should say.

Mr. Wood: From where?

Mr. Young: From the mouth of the Willamette.

The Court: And to the city limits, practically.

Mr. Young: Close to the city limits, your Honor.

Mr. Wood: That is all.

Redirect Examination

By Mr. Young:

Q. Captain, what has been the custom from your observation as to the course of travel of a river boat which is coming down the Columbia River and making the turn into the Willamette to proceed upstream? At what point does that river boat proceed over to the east shore, if at all?

(Testimony of Charles W. Ackerman.)

A. Well, it stays on the east side right around from the mouth on up.

Q. And in the case of river boats coming up-stream from down below the mouth of the Willamette, what is their practice with regard to the course they take in going up the Willamette?

A. Well, they stay to the left of the main channel up to the [195] mouth and then continue to the left coming up river, up in the Willamette, all the way up to practically West Oregon.

Q. And do I understand this practice of the use by river boats of the east side of the channel then runs from the mouth of the Willamette up to a point near the West Oregon mill? A. Yes.

Q. And would that include this large bend in the river that the Court has seen on the map?

A. All of that.

Q. Includes all of that? A. Yes.

Q. Counsel asked you a question in response to which you said that——

The Court: What is Post Office Bar? Is it a bar that still exists, there?

Mr. Wood: Oh, it was an old place in the river that used to shoal up, and they dredged the channel through it.

The Court: No longer a bar there?

Mr. Wood: No.

Mr. Young: Q. May I inquire of the witness, your Honor, who is an expert, what is your understanding about the position of Post Office Bar?

(Testimony of Charles W. Ackerman.)

A. Well, the position—there is still a bar out there. They keep widening this channel. They will have to take that whole island out to take the bar out. There is kind of a peninsula, [196] is what it is, has been filled up, and that is the Post Office Bar.

Q. Measuring along the stream, what would be the approximate length of the Post Office Bar?

The Court: The whole front of Sauvie's Island?

A. I would say two miles.

The Court: Q. The whole front of Sauvie's Island?

A. No, no. Opposite Sauvie's Island. The bar is along here (indicating).

Mr. Young: Loud enough so the reporter can hear, now.

A. Here. It is right along this, here. Post Office Bar No. 3 light.

Mr. Young: Q. You are pointing now to an island?

A. Well, it is an island, there, but there is no water through there now.

Q. But on the map it appears to be an island?

A. Yes.

Q. And "P. O. Bar 3 F. W." appears on one side of that apparent island. Is that right?

A. Fixed white light on it, yes.

Q. Do I understand that Post Office Bar is within substantially the limits of that island?

A. Yes, approximately.

(Testimony of Charles W. Ackerman.)

Q. And the bar is on the east side of the river.
Is that right? A. Yes.

Q. In answer to a question put by counsel, you intimated that eight hundred feet of channel would be adequate for an ocean-going ship to go downstream. Did you mean by that that it would [197] still be safer, practicable, however, for a river boat to pass the ocean-going ship if the river boat were going on the right-hand side?

Mr. Wood: I object to that question.

The Court: He left me alone.

(The last question was read by the reporter.)

The Court: Your objection, Mr. Wood?

Mr. Wood: I think the question is unduly suggestive. I think the witness's answer is clear and complete as he gave it to me. He said they could pass safely and practicably.

A. You didn't say "pass." You said "wide enough for a ship to go down."

Mr. Young: That is exactly the point I want to make out.

The Court: It is cleared up.

Mr. Young: Q. Did you or did you not mean to indicate that it would be safe for the river boat and ship to pass at that point with the river boat being on the west side of the stream?

A. No, it wouldn't be safe.

Q. With reference to the matter of the lights on the Barry K, the evidence has indicated that there were two lights on the forward ends of the

(Testimony of Charles W. Ackerman.)

outside ends of the two barges forward, white lights. They were about six feet, I believe, above the tops of the barges, themselves. Now, assuming that you were on a river boat, or I mean an ocean-going boat, going downstream, and you saw the two mast lights of a boat with either the red or the green [198] light in addition, and then beside that you saw these two white lights forward and near the water's edge, would the existence of those white lights assist you in determining the course of the up-coming boat?

A. You got that so muddled up I can't understand it. You said a ship with those two white lights on the side of that. They never have it.

Q. I am assuming you are on a ship going downstream. A. Yes, I would.

Q. And you are met by this Barry K, let us say, lighted as I have indicated. Would the two forward lights that are on the barges near the water's edge be of any assistance to you in determining what the course of the Barry K was?

A. Yes, it would.

Q. And will you explain your answer?

A. Well, the further apart these two white lights would be, it would show that you were getting that much closer to meeting head and head, if you didn't see the range lights, see, just the side lights, because you would be on a right angle, if they—if you saw the red light and saw those two lights bearing your line, that would show you very near

(Testimony of Charles W. Ackerman.)

crossways of it. The wider they spread the closer head-on you would be.

Q. The questions which were asked you by opposing counsel in regard to the effect of a breeze from the east upon the Barry K with her tow were based upon his statement of evidence that the [199] breeze was a ten-mile breeze from the east. There is also evidence of Captain Reed that the breeze was from ten to fifteen miles an hour. Assuming that the breeze were, say, fifteen miles an hour, what difference, if any, would that make in your statement to the Court about the effect of the breeze upon the Barry K?

A. Well, the more breeze, the more you would have to head into it, and the more speed you would have to head into it.

Mr. Young: That is all.

Mr. Wood: If your Honor please, I don't like to consume your time, but the witness's last answer compels me to go back over something.

Recross Examination

By Mr. Wood:

Q. Now, Captain Ackerman, you told me that the tug and tow could with safety that night, with that breeze prevailing, call it ten or fifteen miles an hour, have come up on the right-hand side of that channel providing she kept her stern off of the right-hand bank a certain distance, did you not.

A. The more wind, the further you stay away, with safety.

(Testimony of Charles W. Ackerman.)

Q. I am going to assume, now, the maximum—let us say a fifteen-mile wind. How far would that tug and tow have to keep off of that right-hand bank to come up on the right-hand side safely?

A. Well, I would try to add a little more distance in there—say another fifty or sixty feet, if I could.

Q. How far are you going to stay now? [200]

A. 250 feet at the least, say.

Q. She would have to come up 250 feet off the dike?

A. Her stern.

Q. Off the dike?

A. Yes.

Q. And she would have to put her bow out into the channel further?

A. Yes.

Q. How far out into the channel would her barges extend then?

A. Well, now, you know the figures as well as I do. You can figure from the stern, 250 feet from the stern, and then the length of your tow and barge, whatever that would be.

Q. All right. Then you will have to tell me what angle she would have to come up there.

A. She is coming up there with a 45, we will say.

Q. And she could do that with perfect safety?

A. If she would keep a-going, yes.

Q. How much room would that leave for the ship coming down?

A. Oh, I don't know. We will say four or five hundred feet.

Q. Now, you say if she kept a-going—

(Testimony of Charles W. Ackerman.)

A. Yes.

Q. —if she kept a-going she could control her course just the way she wanted to, couldn't she?

A. Anyway she wanted to? No.

Q. If she kept going?

A. Well, to a certain extent, yes, she could. [201]

Q. If she kept a-going, and a powerful tug, why would she have to keep her stern 250 feet off of the right-hand bank?

A. Well, because you head out a ways and then you can't keep—you have got to make headway to go upstream. You will stay that way. Then if you start settling in and then swing out again, try to keep that up, make headway up river as well as across, to keep off.

Q. Do you mean that a vessel like the Barry K with her tow making six miles an hour has to keep 250 feet off of that dike with her stern, making six miles an hour?

A. Well, no. I wouldn't say she had to keep that far off, but if anything had happened, the least little thing, you are supposed to use a little precautions, aren't you? You have to be out where you figure a little bit of safety, and if there is a ship coming down you would have to try to get squared around further, if possible. That is why it is not safe to go over there. That is my argument on that.

Q. Do you know the barges after this collision did drift right into this dike?

A. I don't doubt it.

(Testimony of Charles W. Ackerman.)

Q. It did not hurt them, did it?

A. Well, I don't know, but what say those piling were up and you was that much closer so your barges would light on top of these piling and bang up and down?

Q. I don't know the character of the piling. [202]

A. They are sharp piling along there, about a foot in diameter, I should judge.

Q. At what stage is that piling out of water.

A. Let me see. I am just going to guess. About three or four feet; just flush, I think, at three or four feet.

Q. On the 1st of February—

A. I am just guessing. I wouldn't give a definite answer on that.

Q. On the 1st of February, about how would it be?

A. I wouldn't say. I don't even know what the stage of the river was then.

The Court: There was some testimony the other day about meeting a number of log rafts in there. Was it meant by that that they were moored in there, or that there was a movement up and down the stream in there?

Mr. Young: Moving up and down, your Honor.

The Court: It was not this witness; somebody else. Do you want to ask him any more?

(Testimony of Charles W. Ackerman.)

Redirect Examination

By Mr. Young:

Q. To what extent have you observed the use of the river between the mouth of the Willamette and, let us say, the city limits of Portland by towboats that are pulling log rafts?

A. Well, you have got to stay—you have to, in other words, stay—if there are two steamers, say, one following the other, we will put it, and you are above Gillihan's on the right-hand side coming up, you get in to let the first ship go by and then you will try to swing out, if possible, to get your raft away from [203] the beach, but I doubt if you could do it, and then to come in for the second one you have to stay there so long that your rafts are grounded on that point, the tail end of your raft grounds. I could show you by a little pencil easier. I could explain it to you.

The Court: You are not my witness.

Mr. Young: Q. What I was asking particularly, Captain, is to what extent is the river used by towboats pulling rafts in this particular vicinity?

A. The east side is used ninety-nine per cent of the time, all of the time, as a matter of fact, unless there is something wrong or a break-up or something.

Q. How many towboats a day with rafts go by this place, would you know?

A. No, but I will guess. I will say three or four; maybe from three or four to a dozen.

Q. Three or four to a dozen a day—

(Testimony of Charles W. Ackerman.)

A. Yes.

Q. —go by. Now, could you give any estimate of the number of towboats with barges that go past this particular vicinity each day?

A. Well, that would be pretty hard to say.

Q. Could you give it by the week or the month?

A. Well, I am just going to say—I am going to give myself a wide space—from, we will say, three to ten barges a day. [204]

The Court: Mr. Young, I understood your witness yesterday to say that the log tows might be encountered on the west side of the river, which was an added reason for not getting over there with an up-bound tow of barges, but I understand from this witness, and I would assume, that the log rafts move up and down on the east side of the river.

Mr. Young: I think your Honor's remembrance of the testimony is in error, because I recall no testimony of any log rafts using the west side. In fact, have no information at all that they have ever used the west side, and I don't believe any witness so testified here.

Mr. Young: Q. So far as you know, Captain, do log rafts ever use the west side?

A. No, no. They don't.

Mr. Young: That is all.

(Witness excused.) [205]

CHARLES H. BOONE

produced as a witness in behalf of the Libelant,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Where do you live?

A. 5616 North Haight.

Q. In Portland? A. In Portland.

Q. How long have you lived in Portland?

A. Well, I was born there, but I was away for
awhile.

Q. I will find out how old you are if we get the
correct answer there.

A. I have been here since 1893.

Q. Captain, you are a pilot, are you, of river
boats? A. Yes.

Q. And what license do you carry?

A. Well, Master's, pilot's license on the Colum-
bia River between Astoria——

Q. And covering what kind of vessels?

A. Steam vessels.

Q. Ocean-going as well as river?

A. No.

Q. River only? A. Yes.

Q. How long have you been engaged in that
work? [206]

A. I got the first license in 1907.

Q. And have you been continuously engaged in
your work on the river since 1907?

A. With the exception of a year and a half I
was in the hospital.

(Testimony of Charles H. Boone.)

Q. And that work has been confined to the operation of river boats? A. Yes, sir.

Q. In connection with your work, have you had occasion to go past Post Office Bar, which is located near the mouth of the Willamette River in the Willamette? A. Yes.

Q. How familiar are you with that particular vicinity?

A. Well, I have gone by there four or five thousand times, I guess.

Q. Four or five thousand times. At the present time by whom are you employed?

A. The Port of Portland.

Q. How long have you been with that organization? A. About four years.

Q. What is your work with the Port of Portland?

A. Running the Portland, Master of the steamer Portland.

Q. What is the steamer Portland?

A. Well, use her to move ships.

Q. Is she a stern-wheel boat? A. Yes.

Q. Captain, from your experience in the piloting of boats up and down the Willamette River past Post Office Bar, what can you say [207] as to whether or not it is safe or practicable for river boats to use the west side of the river in the vicinity of Post Office Bar?

A. Well, that would all depend on who you meet coming down. In my opinion, if they give you

(Testimony of Charles H. Boone.)

plenty of room you might make it, but if you didn't you are stuck?

Q. Then what would your answer be as to whether it was safe or practicable?

A. My idea was always to eliminate the chance of an accident as much as possible and go up on the east shore.

Q. Why would there be any more chance of an accident for the river boat to be on the west side?

A. Well, you are running along that dike. There is a dike, there, a short piling, and in the night-time it is pretty dark along in there until they cut those trees down, and it was pretty hard to determine just how far off shore you were. And the other side of the river, the worst you could do was to run into the sand bar if you got too close there, and another thing, you wasn't dependent upon the other man's idea of how to get by you. You was over there out of the way.

Q. What do you mean by saying you are "over there out of the way"?

A. Well, ordinarily they follow the left-hand side, favor the left-hand side of the river coming down, have been for years.

Q. Who favors the left-hand side?

A. The ships. [208]

Q. The ocean ships? A. Yes.

Q. And what about the river boats?

A. Well, they have come along, too, but then they don't make much difference.

(Testimony of Charles H. Boone.)

Q. I mean, which side of the river have the river boats customarily been proceeding up and down past Post Office Bar?

A. Well, I think the most of them go up the left-hand side of the river,—

Q. And—

A. —with a tow. Of course, if they are running light it doesn't make much difference. Your boat is pretty active then.

Q. What would you say as to the extent there would be any greater hazard to a river boat in proceeding upstream on the west side than there would be proceeding upstream on the east side?

A. Well, you are just taking a chance that the other fellow don't give you enough room to get by, there, and, as I say, it is not a very nice shore to run along close to.

Q. What effect does the fact that you are rounding the outside of a curve have on the operation of your river boat?

A. Well, it probably sets her over a little; especially in the wintertime there is more or less drift in there. The current sets in on the piling along there a little bit.

Q. And what effect, if any, would the displacement swell of an ocean-going ship proceeding downstream have upon the operation [209] of your river boat on the west side?

A. Well, that depends on how close she run to you. If she got close enough to you to get suction

(Testimony of Charles H. Boone.)

from her wheel, it would pull your stern over towards her a little bit, maybe throw you off your course a little, but that would depend on how big she was or how fast she was going.

Q. The bigger she was and the faster——

A. The more suction.

Q. What about the displacement swell, itself?

A. Well, that doesn't make a great deal of difference, I don't think.

Q. To what extent has this custom to which you have referred of the river boats using the east side of the river, how long has that custom continued?

A. Well, when I started in in 1919 it was still going up that side. At that time you couldn't get over on the other side. The ocean-going vessels had to lay over to that dike pretty close, but they have dredged the channel since then, and as they dredge the channel that moves them away from the island, Sauvie's island.

Q. This custom to your knowledge has existed since 1899——

A. Yes.

Q. ——of the river boats using the east side of the river?

A. Yes.

Q. Is there any wind protection that the river boats have by being on the east side of the river that they would not have if they [210] were on the west?

A. Well, if there was a downstream wind it would probably be a little—a south wind, it probably wouldn't be quite as strong if you were over there in the bight and close to the island.

(Testimony of Charles H. Boone.)

Q. How about an east wind?

A. Well, an east wind blows in there, too, yes.

Q. What would be the effect of the east wind on your river boat if you were on the west side of the river as compared with being on the east side?

A. Well, you would have to keep heading into it a little, I suppose.

Q. Is there any protection on the east side that does not exist on the west, with regard to wind?

A. Well, not very much.

Mr. Young: That is all.

Cross Examination

By Mr. Wood:

Q. Captain Boone, before you went to work for the Port of Portland, whom were you employed by?

A. Well, I was employed by the Harkins Transportation Company and the Diamond O Navigation Company. You mean immediately before I went on there?

Q. Yes. Have you ever towed these paper barges for the paper company? A. No.

Q. So you have no actual experience handling them? [211]

A. No, not the paper barges, no.

Q. What kind of barges have you towed, sawdust barges?

A. Sand and gravel, mostly.

Q. For the Diamond O Navigation Company?

A. No, for the Star Sand Company and the Columbia Digger.

(Testimony of Charles H. Boone.)

Q. I was struck by your answer when you said that this channel in the old days back in 1900 was narrow and only on the side next to the dike, and the ships had to go that way. Is that correct?

A. Well, that is what—I noticed them come in there pretty close to the dike.

Q. In other words, when this custom of the tow-boats going to the left-hand side began, the channel conditions were that there was a narrow channel across Post Office Bar, ship channel, I mean, only about 250 feet wide. Isn't that true?

A. I imagine.

Q. Well, don't you know that?

A. Well, I was just a kid, then. I was only fifteen years old. I didn't know how wide the channel was.

Q. Well, when your knowledge of it first began, when was that?

A. Well, I was—1907 I got the first license.

Q. Well, what were the channel conditions there then?

A. Well, they—you had to stay in there. The ships stayed in there.

Q. The only ship channel there was at that time was in along this [212] dike. Isn't that true?

A. Yes.

Q. What? And that is when this custom began, didn't it?

A. (The witness shook his head "Yes.")

Q. Is that a fact? A. Yes.

(Testimony of Charles H. Boone.)

Q. And with the gradual widening of the channel the custom has kept on, hasn't it, for the tow-boats to keep to the east side? Is that your idea?

A. Yes, and the custom of the pilots is to come around that way, too. They haven't changed very much either.

Q. Notwithstanding the channel has now been widened till it is about 800 feet wide, isn't it, at this place?

A. That is what they say. I don't know.

Q. Don't you know it is about that?

A. No, I couldn't tell you how wide it is. I haven't had a chart for years.

Q. If you want to, you can step down and look at this one and scale it off. If we will assume that the deep ship channel now is 800 feet wide, 30 feet deep, 800 feet wide,—

Mr. Young: Just a moment. If the Court please, I don't know what the question is going to be, but I object to the assumption in any event upon the ground that it doesn't specify the depth.

The Court: Thirty feet, he said.

Mr. Young: Thirty-foot channel counsel is speaking about, [213] and not the 35-foot channel?

Mr. Wood: That is right.

Q. Assuming that the channel at Post Office Bar is 800 feet wide and 300 feet deep—

A. Three hundred?

Q. Eight hundred feet wide and 30 feet deep, is there any reason in your opinion other than the

(Testimony of Charles H. Boone.)

fact that this custom grew up in olden years for the prevalence of this custom?

A. Well, that thirty feet wouldn't do you much good, because this ship we moved this morning, she was drawing thirty feet. You would have to have a little more than that to float her.

Q. Do you think that a tug and tow such as shown in these photographs, here, cannot, with safety to herself, come up the right-hand side of the Post Office Bar channel with a 10- to 15-mile breeze from the east and a downstream current of one mile?

A. Well, I wouldn't know about that. I never handled that boat, and not knowing how she handled,—it depends on the ship coming down more than anything else.

Q. Well, if the ship coming down——

A. If it was guaranteed that the ship coming down was going to keep getting over to keep out of your way, you would be all right.

Q. You know what Article 25 of the Inland Rules is? A. Yes.

Q. What is it?

A. Keeping to the right on the narrow channels. [214]

Q. Yes. Every vessel navigating a narrow channel shall, when safe and practicable, keep to that side which lies on her own starboard hand. Is that right?

A. Well, that "safe and practicable"——

(Testimony of Charles H. Boone.)

Q. I quoted the rule right?

A. Yes, but that is where——

Mr. Young: The witness hasn't had a chance to complete his statement.

The Court: Oh, he is doing all right, Mr. Young.

A. That is where the hinges come, whether you think it is safe to keep over in there.

Mr. Wood: Q. Now, if the *Pennsylvanian*, an ocean-going steamer drawing about nineteen feet, were coming down that channel on a comparatively calm night, good visibility, do you think it would be safe and practicable for her to keep to her own right-hand side?

A. Well, yes. I imagine it would.

Q. And that being so——

A. But if the man on the boat didn't know he was meeting the *Pennsylvanian* drawing nineteen feet, maybe he thought he was meeting one drawing thirty feet.

Q. Well, we will come to that in a minute. I say the *Pennsylvanian* coming down under those circumstances was found to keep to her own right-hand side of the channel, was she not?

A. Well, he did.

Q. I say, didn't the rule require him to? [215]

A. Well, I don't know whether it would require him to run into the other boat or not.

The Court: By the way, I wish, there, something could be said more about this recall signal that was mentioned the other day. Some witness referred to a recall signal.

(Testimony of Charles H. Boone.)

Mr. Wood: I do not remember it, your Honor, and I do not know what he meant.

The Court: Either the pilot or the Master conditioned one of his answers on a recall signal being given.

Mr. Wood: I do not remember it.

The Court: Continue with this witness now, but I wish you would keep that in mind.

Mr. Young: We will clear that up when he comes in with this witness, your Honor.

The Court: If you are going to put this man on about the Siranger, shall we do that now?

Mr. Wood: I just want to ask him a question or two about it, yes.

Q. There is Article 25. I hand it to you so you can have it before you if you want to refer to it. Now, you have read it, Captain Boone?

(The witness laid the pamphlet on the table.)

Q. Now, if it was safe and practicable for the Pennsylvanian to keep to her own right-hand side, she was bound to do it, was she not? A. Yes.

Q. So that the up-coming towboat should rely on the down-coming [216] steamer doing her duty, should he not, and obeying the rule?

A. Well, I imagine by the time they got to the point where it was——

Q. No, just answer my question.

A. I suppose, yes, he would keep to the right, yes, if he thought he could get by.

Q. Then if the Pennsylvanian coming down did

(Testimony of Charles H. Boone.)

obey the rule and keep to that side of the channel which lay on her starboard hand, how much of the ship channel would she leave for the upcoming towboat? How much room between the down-coming Pennsylvanian and the dike would there be?

A. Well, I don't know. I wasn't there.

Q. Don't you know those channel footages?

A. Well, where she first saw this boat and what she did when she first saw it, if she started off to the right when she first saw it, or whether she kept on her course and didn't start to the right until she got pretty close to it.

Q. Well, do you want to step down here and look at this chart? Just familiarize yourself with that chart if you don't know it already. Do you recognize it?

A. Yes.

Q. Now, if the Pennsylvanian was coming down on this range, here, and left it about there, if she did her duty to keep to the right-hand side of the channel, how much would there be between her and the dike? You can measure it if you want to on the chart. Here, [217] I will give you a pair of dividers.

A. Well, she is coming down here.

Q. Suppose she obeys the rule and keeps to her own right-hand side of the channel.

A. She is drawing——

Q. Nineteen feet.

A. ——nineteen feet. It would be right along here, then.

(Testimony of Charles H. Boone.)

Q. How much room is she going to leave for the other ship?

A. Leave the whole river, there, according to that. Thirty-five feet, there. Is that the edge of the bank?

Q. The chart speaks for itself. The 30-foot depth curve is shown thus. See the little dots. Measure it yourself. Is that right?

A. Why did you stop there? Why didn't you keep on over here? There is water over there, isn't there?

Q. Do you want to look at this, Captain?

A. No.

Q. How much space would there have been left for the up-coming ship, assuming the *Pennsylvanian* did her duty and stayed on the right?

Mr. Young: If the Court please, your Honor will have in mind that these questions put by counsel, "assuming the *Pennsylvanian* did her duty," is one of the questions your Honor will be called upon to pass on.

Mr. Wood: Q. I will say "assuming she kept to the right-hand [218] side of the channel."

A. Assuming where she started to get to the right?

The Court: Come back to the chair, please.

Mr. Wood: Q. Captain, that seems a simple question to answer. I wish you would give us the benefit of your opinion on it.

A. Well, if you could tell me where she was when

(Testimony of Charles H. Boone.)

she took to the right. That map just shows the courses.

Q. Well, Captain, I have shown you here on the chart that here the Barry K when she sighted the Pennsylvanian was in the general vicinity of Post Office Bar 3, and the Pennsylvanian was up about abreast of Multnomah Channel on her right-hand side.

Mr. Young: If the Court please, I think the witness should be further informed that the Pennsylvanian was coming down the Post Office Range, however, which necessarily——

A. That is what I am trying to get, is when she left that range.

Mr. Wood: Come on down here. I will show you.

Mr. Young: If counsel can show the witness, your Honor, where the Pennsylvanian was when she left the range, there is no testimony in the case at this stage to indicate that. We don't know exactly where she was in the present state of the record.

Mr. Wood: Q. Now, Captain Boone, the Barry K was here, according to Captain Reed, when he first sighted the Pennsylvanian. The Pennsylvanian was here, as near as Captain Reed could tell, when he first sighted her, see. Now, assuming that the Pennsylvanian, commencing from this point, or a hundred feet, or [219] a few hundred feet from there, began to leave the range and come down

(Testimony of Charles H. Boone.)

here to the right so that the vessels would meet anywhere in this vicinity—well, there is the collision—supposing they were going to meet down in that part of the channel, see, but the Pennsylvanian, I want you to assume, kept to her right-hand side——

A. She left the range here?

Q. And that is where the collision took place.

A. In a direct line she went to there?

Mr. Young: Pardon me. If the Court please, there is no evidence to indicate that the Pennsylvanian left the range a hundred feet——

The Court: It will have to be. Mr. Wood may be intending to put it in, as far as I know.

Mr. Young: I want to clarify that point. There is nothing in the record at this time, at least.

Mr. Wood: Q. Captain Boone, here is where she was when Reed first saw her, so he says. Here is where she was when the collision took place.

A. How far is that?

Q. That is up to you.

A. Where is that other light over here?

Q. Captain Boone, I will ask you this. This seems simple enough. Look here, now. Is not that channel all along there, about the vital part we are talking about, the whole distance of it there [220] is practically the same width, is it not?

A. Well, you have only got part of the channel. There is some more over here.

Q. I know it. I am talking about the dredged 30-foot channel. It is the same width all along, is it not, about 800 feet?

(Testimony of Charles H. Boone.)

A. That is what you measured it.

Q. If it is all the same width, it does not make any difference where they meet, as long as I assume the Pennsylvanian was obeying the rule and keeping to the right. If she obeyed the rule and kept to the right, how much water would there have been for the up-coming ship to pass in?

Q. According to that, she would have the whole river, there.

Q. Isn't that enough?

A. I don't know. You would have to determine whether she was really there or whether she cut across there. That is the question.

Q. If the Pennsylvanian did her duty and kept to the right, the up-coming ship would have five or six hundred feet of water anyway to pass in, wouldn't she?

A. Well, of course, as I say, it depends on when she started over to the right. If she followed that shore down—yes, nineteen feet—she would be pretty close to the bank.

Q. I do not see why you are so unwilling to give me a direct answer on this.

A. I don't know where she was, if she arrived at that point.

Q. I have shown you the channel is the same width all the way where [221] they met.

A. Maybe she is farther over to the left and went over there later on.

Q. How much room, then,—I will put it to you

(Testimony of Charles H. Boone.)

this way—should the Pennsylvanian have left on her port side for the other boat to pass safely with her tow?

A. Well, that would be up to him. I don't know. I couldn't say that, because I don't know how he handles his ship.

Q. Well, Captain Boone, on your direct testimony when you were testifying for your counsel, here, you testified that it would be all right for the up-coming boat to take the right-hand side if the other fellow left him enough room.

A. Yes; sure.

Q. All right. How much room do you have to leave him?

A. Well, leave him enough to get by. It depends on the boat.

Mr. Wood: If that kind of answer satisfies your Honor, why it satisfies me.

The Court: Why drag me into this?

Mr. Wood: Q. You said the displacement wave would not have much effect, did you not?

A. "The displacement swell," I said. The swell from the bow, as I understand it.

Q. The displacement swell of the down-coming Pennsylvanian would not have any appreciable effect, you said, on the towing?

A. Not necessarily, I think. [222]

Q. I think so, too. Then you said that the suction from the steamer might have some effect?

A. Yes.

(Testimony of Charles H. Boone.)

Q. How close would they have to be to produce that effect?

A. Well, it depends on the speed of the ship and the draft. Some ships suck worse than others, too. I couldn't give you a——

Q. You can't give any answer to that?

A. I have had them pull me, yes. Got too close to them.

Q. Can you give us any idea?

A. Well, I was probably fifty or a hundred feet.

Q. About this night, with the Pennsylvanian coming down drawing nineteen feet and the upcoming ship going six miles an hour, can you give us any idea how much effect the suction would be?

A. No, I couldn't, no.

Q. No. But if there was suction, what would its effect be on the Barry K and her tow? What would it do to them?

A. Well, it would interrupt her course.

Q. Which way?

A. Well, it would ordinarily pull the stern of the boat to the ship.

Q. That is what I thought. Then if the Barry K were coming up on the right-hand side, here, crab-wise, holding her nose out into the breeze a bit, and the Pennsylvanian produced any effect on her by suction, it would be to pull the Barry K's stern this way, would it not? [223]

A. Yes. Probably pull the barges first, though.

(Testimony of Charles H. Boone.)

Q. That is what I want to find out. First you said it was going to pull the stern. Now you say pull the barge.

A. It doesn't necessarily have to be the boat. That is where you generally feel it the quickest, on the stern.

Q. In other words, it would have a tendency to straighten her up in the channel, would it not?

A. Yes.

Q. That would not do her any harm, would it?

A. I guess not.

Mr. Wood: That is all.

Mr. Young. That is all.

(Witness excused.)

The Court: Now, Captain Stayton.

N. W. STAYTON,

a witness in behalf of the Libelant, was thereupon recalled for further cross examination, and, having been previously sworn, further testified as follows:

The Court: Mr. Wood reserved the right to ask you about your testimony in the Siranger case, Captain.

Mr. Wood: That is right. [224]

Further Cross Examination

By Mr. Wood:

Q. I have sent into the clerk's office and got the testimony in the Siranger case, and I want to

(Testimony of N. W. Stayton.)

read you a passage where the Court was questioning you, and ask you if you remember giving this testimony, if it is correct:

“The Court: Were you figuring on going right on past there without giving a passing signal?

“A. Yes, sir. I meet a good many tugs in there on both sides of the channel and well off the ranges, and we blow no passing signals.

“The Court: Your idea is that the rules aren’t binding on you, or are they?

“A. Not under the rules of these motorboats. I don’t think they are included in it. They are not included as steam vessels, these little uninspected craft.

“The Court: You think it is only steam vessels that you have to blow for?

“A. Steam vessels and inspected motor vessels, larger vessels.

“The Court: The rules don’t say anything about that, do they?

“A. Well, I will tell you, Judge, the rule on motorboats and such like as that is kind of funny. It is a kind of a hard rule to understand entirely.

“The Court: Do you mean to say that you don’t think [225] they are binding on you? Is that what you are saying?

“A. No, I wouldn’t say that, Judge.

“The Court: Well, you don’t think that this rule requires you when you overtake a vessel to blow for anything on the river?

“(No answer.)”

(Testimony of N. W. Stayton.)

Now, do you remember giving that testimony?

A. Was that before the Court, or was that before the inspectors?

Q. That was before the Court. The Court was asking you the questions. If you wish to refer to this later it is page 344.

Mr. Young: I don't have it.

A. I suppose if it is in the record why I made it.

Mr. Wood: Q. Well, then, do you now, in the light of that testimony, admit that you don't always consider these pilot rules binding on you?

A. If that is brought into the record, hasn't the right of—the Inspectors' decision on this Siranger case with that collision got a right to be brought into the Court?

Q. I don't know about that. I am asking you whether you gave that testimony and if it is correct.

The Court: Well, that is not the question. He says if it is related there he must have given it. Now, the question is what his present position is as to the rules, Mr. Wood.

Mr. Wood: Q. Do you think, as a pilot, that the rules as to blowing signals are binding on you pilots or not? [226]

A. They are at the present time. I told you since the Siranger case came up that this law has been changed and the motor boats are under a new regulation to what they were at that time.

The Court: Q. Well, there are no motor boats in this case.

(Testimony of N. W. Stayton.)

A. Motor boats are considered as a steam vessel at the present time.

Q. Well, did you understand and do you understand now that there was a time on the river when you did not have to blow any signals at all to a motor boat?

Mr. Young: If the Court please, it seems to me there ought to be something in this type of cross examination, because there is no motor boat involved in this case.

Mr. Wood: I am going into the competency of this pilot and also to show that they do not regard these rules as binding on them.

The Court: Q. The question he is asking you is whether you, as a former tugboat man—I understand you graduated into a deep sea pilot, Columbia River pilot,—as a former tugboat man, do you consider the Inspectors' rules were binding on towboats, particularly as to blowing signals? That is the question. Let us pin it down to that. Did you ever take that position?

A. They are at the present time, Judge.

Q. Were they at the time of this accident, in your opinion?

Mr. Young: February 1, 1941.

A. This accident wasn't in February, '41, Judge.

The Court: Q. What? [227]

A. This accident wasn't—

Mr. Young: February 1, 1941, is the date of the Barry K accident.

(Testimony of N. W. Stayton.)

The Court: Q. In the present case the accident occurred in February, 1941?

A. Yes.

Q. Do you think the rules were binding then on towboat men?

A. Certainly. This was a steam vessel that had this tow.

The Court: Anything further?

Mr. Wood: Q. I should like to ask him whether, at the time of the Siranger accident, he considered the rules requiring passing signals were not binding on him.

The Court: Well, Mr. Wood, I think that is covered.

Mr. Wood: Very well. I withdraw it.

The Court: Anything further?

Mr. Young: No questions.

The Court: Step down.

(Witness excused.)

Mr. Young: Your Honor made some inquiry as to the use by Captain Reed of the term "recall signal." In checking with Captain Reed, he does not recall using that term.

The Court: No, I will just tell you the impression I got. The reporter says it was right. The Barry K blew the first signal, the two blasts. Then the Pennsylvanian answered with one. [228] Then

there is the same sequence of signals by the Barry K without answer, four, two, and four, and some place in there when he was being examined about his impressions at the time as to what he might expect of the Pennsylvanian, he said it might have been different if you got a recall signal, something like that.

Mr. Young: Why not call Captain Reed to the stand?

The Court: Suit yourself.

Mr. Young: As long as your Honor has raised the point, I should like to have it clarified.

Captain Reed, will you take the stand, please?

I wonder if the court reporter could turn to that testimony.

WM. A. REED,

produced as a witness in behalf of the Libelant, was recalled to the stand and testified further as follows:

Further Direct Examination

By Mr. Young:

Q. Captain Reed,—

The Court: Q. First, what is a recall signal?

A. There isn't such a thing.

The Court: That is easy. There is no such a thing.

Mr. Young: Q. Did you in your testimony yesterday make any mention of a recall signal?

A. I don't think I did.

Q. If you used the word "recall," did you intend to use that word? [229]

A. No.

(Testimony of Wm. A. Reed.)

The Court: Q. Do you remember this instance that I am talking about?

A. No. I tried to hear all of it. I couldn't, your Honor.

Q. The reporter and I both have the same recollection. In giving your testimony you said at a certain point that if you got a recall signal—or that your conduct might have been different. Do you remember anything like that at all?

A. No, I really don't remember it.

Q. Anything at all like that? A. No.

The Court: We will attribute it to the hot weather.

Mr. Young: I might make the suggestion that the reporter might check that, and if he will supply me a short transcript of it we will check it.

Mr. Wood: I want to ask him a question as long as he is on the stand.

Further Cross Examination

By Mr. Wood:

Q. Captain Reed, I am showing you Libelant's Exhibit 4, a photograph of the Barry K. The pilot house on that ship was changed or altered, at one time, was it not? A. It was.

Q. At what date was that done?

A. I don't recall. [230]

Q. Before or after this accident?

A. Before.

Q. Do you know how long before?

A. No, I really couldn't state.

(Testimony of Wm. A. Reed.)

Q. Can you tell what the change was?

A. Yes, sir. The pilot house was raised about seven feet higher than originally.

Q. Could you point on the photograph and show the Court the alteration that was made?

A. This cabin—or there was two cabins put in here (indicating), one on this end, and one on the back end was put in between the pilot house and the cabin.

Q. Raising the pilot house?

A. Raised it exactly seven feet to measurement.

Q. Did it raise anything else?

A. Yes, it raised the side lights and the mast lights.

Q. Did it raise any of the rest of the housing?

A. No.

Q. Just the pilot house?

A. Just the pilot house.

Q. Raised that seven feet?

A. Raised that seven feet. But there were two rooms.

Q. And were those two rooms built on there additional?

A. Yes, additional from the original.

Q. So those two rooms—well, what are the dimensions of those two rooms? [231]

A. Those rooms were 22 feet long and 7 feet high.

Q. So they gave an exposure to wind pressure of 22 feet by 7 feet?

A. Yes, sir.

(Testimony of Wm. A. Reed.)

Q. And then on top of that you put a pilot house seven feet higher than it had been before?

A. No, the original pilot house just raised.

Q. I know, but the height of it was seven feet more than it had been before? A. Yes.

Mr. Wood: Does your Honor understand that?

A. Seven and a half feet.

Mr. Young: Q. And you are clear in your mind that that raising occurred before the accident—— A. Yes, sir.

Q. ——of February 1? A. Yes, sir.

Mr. Wood: Q. And all of that would increase the surface exposed to an easterly breeze, would it not? A. Yes, sir.

Q. Did you have anything to do with that raising of the pilot house? A. No, sir.

Q. Who decided on that?

A. Mr. Confer and Mr. Gault.

The Court: We are going to quit at twelve, Mr. Young. You have 21 minutes.

(Witness excused.) [232]

Mr. Young: I cannot guarantee to finish with the cross examination of this witness. We can put him up and stop at twelve.

HENDERSON B. DAVIS,

produced as a witness in behalf of the Libelant,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Mr. Davis, do you live in Portland?

A. 7427 Southeast Ninth.

Q. And how long have you lived here?

A. Well, I haven't lived here all of the time
since 1903. I have been in and out of Portland
since 1903.

Q. What is your occupation?

A. At the present time?

Q. Yes.

A. I am alternate Master and pilot of the tug
Shaver.

Q. Employed by whom?

A. Shaver Transportation Company.

Q. What was your work prior to that time, prior
to the time you worked for Shaver Transportation?

A. Oh, pilot and Master of tugboats.

Q. And what license do you hold?

A. Master of inland vessels of any gross tons,
and pilot, first-class pilot, from Astoria, Warren-
dale, and Oregon City. [233]

Q. And how long have you held those licenses?

A. 1926.

Q. How long altogether have you had experi-
ence in the operation of boats on the river in any
capacity?

(Testimony of Henderson B. Davis.)

A. You mean as a deck hand, too?

Q. In any capacity. A. Since 1917.

Q. And then since 1917, then, you have been on the river on river boats, have you, working on river boats? A. Yes, sir.

Q. Do you have a license to operate ocean-going steamers? A. No, sir.

Q. Your experience is confined to river boats?

A. Yes, sir.

Q. To what extent have you had occasion to go past Post Office Bar which is down the Willamette River near its mouth?

A. Well, that is quite frequent, but it is hard to tell how many times that you would a week or anything like that, because we go into the lower river and get a tow and come back. I would say twice a week anyway.

Q. So you are familiar with Post Office Bar?

A. Yes, sir.

Q. Based upon your experience in the operation of river boats and towboats, will you state to the Court whether in your opinion it is safe or practicable for river boats to use the west side of [234] the river when passing Post Office Bar?

A. Well, we use the east side of the bank all the way through.

Q. Just answer the question. In your opinion is it safe or practicable for river boats to use the west side of the river at that point?

A. No, I would say it isn't safe to use the west side.

(Testimony of Henderson B. Davis.)

Q. Now, will you explain your answer?

A. Well, that is quite a question to explain, to my idea.

Q. Well, you have the opportunity, so explain it now, please.

A. You get down in that bend in there with a tow of barges or rafts, why you are in too close a quarters to pass a ship.

The Court: Now, right there, he has got barges and rafts over on that side of the river again.

Mr. Young: Q. Now, have you ever operated or piloted a river boat pulling a raft or pushing barges, and used the west side of that river?

A. No; no, I never did.

Q. You never did? A. No, sir.

Q. Have you ever seen any other pilot operate river boats on the west side of the river around Post Office Bar?

A. Well, as far as I could recall, I saw a boat—I couldn't say what year it was—an Astoria boat come up around that side.

Q. Is that the only instance you know of?

A. That is the only one that I have seen, myself. I couldn't say [235] what has happened while I was away from there.

The Court: Q. Then what do you mean by meeting rafts or barges over there? What did you mean by that a minute ago?

A. I never said "meeting rafts or barges." I said I wouldn't go over there with rafts or barges.

(Testimony of Henderson B. Davis.)

Q. I thought you said a minute ago, and I think the witness said the other day, that if you got into that bend and you came on some rafts or barges you would be in a fix.

A. No, I never said that.

The Court: Which, of course, is contradictory to your theory of the case, that rafts and barges are never over on that side of the river.

Mr. Young: I am still convinced, your Honor, that a check of the transcript there will show that no witness has testified to rafts or barges.

The Court: I misunderstood him. He says, if you get in there with rafts or barges.

Mr. Young: That is to say, if you did that you would be too close.

(The last question and answer were read by the reporter.)

Mr. Young: Q. To your knowledge, will you state whether or not it has been the uniform practice of river boat men to use the east side of the river in passing Post Office Bar?

A. Absolutely, yes.

Q. And will you inform the Court as to what distance along the [236] river that practice has obtained in?

A. You mean from Astoria, up in?

Q. Well, how far up or below Post Office Bar?

A. From the mouth of the Willamette.

Q. And how far upstream?

A. I will say around the highway bridge or street bridge at St. Johns.

(Testimony of Henderson B. Davis.)

The Court: Q. Do you claim that river boats without tows do that, too?

A. Well, the river boat without a tow, why they are more active.

Q. I know what they are.

A. They go where they want to go.

Q. I know what they are. What I want to know is, do you claim they do that, too?

A. I do. I hold the east side all the way along there.

Mr. Young: Q. Have you, yourself, ever seen anyone else piloting a river boat without a tow or without—it is either a tow or barge—in using the west side?

A. A boat running without a tow?

Q. Running light, yes. A. Yes.

Q. You have seen that? A. Yes, sir.

Q. However, then, your answer, as I understand, is confined to the river boats which are either pulling tows or pushing barges. Is that correct? [237] A. Well, a barge is a tow.

Q. Well, either way. In some way handling barges or rafts, let us say.

A. Well, handling barges or rafts we stay to the east bank.

Q. Stay to the east bank, there. Now, a few moments ago you stated in your opinion it was neither safe nor practicable for river boats to use that west side of the river. You were about to state why. Now, will you develop that, please?

(Testimony of Henderson B. Davis.)

A. Well, when you see a ship coming down there, you don't know whether it is going to draw nineteen feet of water or thirty-five feet of water. And if you were in there close enough to the bank and the swells from the ship or the kick-up from the stern would come in against you with the tow, why it would set you over into the dike, if you was a couple of hundred feet off the dike, and if the wind was blowing, there, and you had to slow down for your lines, to keep the ship swells from parting your lines, and the wind was blowing on that west bank, which it does quite often in the wintertime, why you would blow on that bank, on that west bank.

The Court: How long is that dike, Mr. Young?

Mr. Young: Were you asking me, your Honor?

The Court: Yes.

Mr. Young: It is a little over four thousand feet long.

Q. Do you agree with that, Mr. Davis?

A. Well, I couldn't say exactly how long the dike is, because part [238] of the lower end of it is tore out, down at the lower end.

Mr. Young: I think it runs a little over four thousand feet, your Honor.

Q. Mr. Davis, I am handing you Libellant's Exhibit No. 5, which is a photograph of the Barry K with the barges which she was pushing at the time of the accident.

The Court: Mr. Young, these people all say they

(Testimony of Henderson B. Davis.)

stay on the east side there for a distance of two to two and a half miles?

Mr. Young: Yes.

The Court: That is twelve to fifteen thousand feet.

Mr. Young: That is right.

The Court: And they emphasize, as the Number 1 reason for doing so, the danger from the dike which is only over four thousand feet of the distance.

Mr. Young: That is right.

The Court: Do you claim that the existence of the dike there for a third or a fourth of the distance is controlling as to the entire area through there?

Mr. Young: That is one factor, your Honor. Our position is this: that, as you observe from an examination of the chart, there is a long, sweeping bend of the river which runs there for possibly a mile and a half to two miles, throughout its entire length. The dike, to which we have been referring, happens to be located at the point which is in close proximity to the point of the accident which was involved in this case, and at that [239] particular point creates an additional hazard, which, perhaps, may not exist at other points along the river, there. However, ships which are traveling along the stream do not travel with the speed of either airplanes or automobiles. They are traveling comparatively slowly, and their maneuverability is

(Testimony of Henderson B. Davis.)

therefore much more limited. For that reason, if a boat, for example, is coming upstream, a river boat, and it is to avoid the hazard which is on the west side of the river at this point, it naturally will have to stay over on the east side for a greater distance than merely the length of some four thousand feet, which is on the west side where the dike is, in order to miss the dike altogether. That is simply one factor which enters into it. In so far as this custom is concerned, its relevancy to this lawsuit is naturally confined to the place where the accident occurred. It happens that the testimony of the witnesses covers a little greater area than the particular point of accident.

The Court: Well, what factor, really, other than the dike, is in accordance with the bearing——

Mr. Young: The fact—the witnesses have already referred to them, your Honor—the fact that the ship is coming around a long, sweeping bend, and if the river boat is on the outside of that bend—that is, over near the west side—there is the tendency towards side-slipping.

The Court: It all comes back to the dike. They would be thrown against the dike. [240]

Mr. Young: If the dike wasn't there they would be thrown against the shore. The dike makes an increased hazard, because it is more dangerous to run into the dike, which has the spikes in it which one of the witnesses has mentioned——

Mr. Wood: There is no testimony that that con-

(Testimony of Henderson B. Davis.)

dition prevailed at that time. In fact, the testimony was that the barges went over there and tied up along the dike, which would imply the piles were out of the water.

Mr. Young: The piles, in fact, vary in height. Some of them are out of the water and some of them are not. The only point I am making at this time is—and this is a matter that is perfectly obvious to anyone—that if a river boat grounded on a soft bank the amount of damage to a riverboat would be less than the amount of damage if the river boat runs against a piling, whether the piling is out of the water or under the water or both places. That is the point I make, there.

Now, answering your Honor's questions further, there are a number of factors that enter into this. Take, for example, the Barry K coming down the Columbia River and making the turn at the mouth of the Willamette. If that boat has to avoid the hazard, let us say, of this dike, which is on the west side of the stream, there would be no sense in the Barry K first crossing the mouth of the Willamette and going over to the right-hand side until it gets up to the point just opposite the dock and then at that point crossing over to the left-hand side, staying there [241] until it gets back to that particular hazard and then coming back to the right-hand side again. In other words, you would have three crossings of the river involved, whereas, in following the course that the Barry K was following at this time, there wasn't any crossing of

(Testimony of Henderson B. Davis.)

the river involved, and to that extent a hazard of collision of boats going in each direction, whether ocean-going boats or river boats, would be considerably reduced. That is one of the factors which enters into the picture in explaining why it is safer and more practicable for the river boats to stay over on the east side of the river all of the way up from the mouth of the Willamette to the place where this accident occurred and to some little distance beyond.

The Court: Practically the city limits of Portland.

Mr. Young: Yes, that is true, because the bend runs up here practically to the city limits of Portland. Here is the Port of Portland terminal right at this point, and you are just pulling out of the bend when you get up to that point (indicating). These factors of side-slipping, the factors of the effect of displacement swell from a downstream ocean-going ship throwing the waves over against a light-draft river boat proceeding upstream, tend, as the witnesses have indicated, to throw the river boat over to the river boat's right or starboard side and would increase the danger of running into either a bank or a dike, if it happens to be in the position of the location of the dike. Those hazards are all eliminated when the river boats use the east side of the stream. [242]

The Court: The dike is the big feature, then.

Mr. Young: The dike is a big feature.

(Testimony of Henderson B. Davis.)

The Court: The dike has been featured.

Mr. Young: There is no question about that. As a matter of fact, the accident happened just opposite that dike, just across the river from the Silo Dolphin, as indicated on this map.

The Court: You don't have any further questions in a short time?

Mr. Young: Well, probably not, your Honor.

The Court: Eight o'clock in the morning, gentlemen.

(Thereupon, at 11:55 o'clock A. M., Court was adjourned until tomorrow, Thursday, July 17, 1941, 8 o'clock A. M.) [243]

Thursday, July 17, 1941,
at 8 o'clock A. M.,

pursuant to adjournment, the following further proceedings were had:

Mr. Reed: If the Court please, yesterday morning your Honor inquired of Captain Reed whether he had used the term "recall signal" in his testimony, and Captain Reed, upon the stand, did not remember having used that language. Since yesterday, the reporter has run off a part of Captain Reed's testimony, and I should like at this time to put Captain Reed upon the stand in this regard toward the end of clarifying the use of that word.

The Court: Have you seen a copy of it?

Mr. Wood: No, I have not.

The Court: Give that to Mr. Wood.

WM. A. REED,

produced as a witness in behalf of the Libelant, was recalled to the stand and testified further as follows:

Further Direct Examination

By Mr. Young:

Q. Captain Reed, the reporter's transcript of the part of your testimony when you were first on the stand and under your cross examination by Mr. Wood contains the following question and your answer as follows: "Question: You think that when you request a starboard to starboard passage with two blasts, the other [244] ship must accede to it? Answer: Yes, sir. If she doesn't she can blow me a recall or a danger whistle." Do you recall having given that answer?

A. I don't recall it, but the court records shows it. I must have done it.

Q. Have you any explanation for the use of that word "recall"?

A. Well, the only explanation I could make on that "recall," I think there is such a thing when you go up to a bridge and blow for it and then you decide not to go through, you recall the whistles that you put in. My interpretation of this was, if he didn't want to go to starboard he could have called my whistles with a danger whistle. That is about the only interpretation I could have. He should have given me a danger whistle if he didn't want to pass starboard to starboard.

Q. You mean a danger whistle instead of a port passing whistle? A. Yes.

(Testimony of Wm. A. Reed.)

Mr. Wood: While Captain Reed is on the stand I might want to ask him one question.

Further Cross Examination

By Mr. Wood:

Q. Captain Reed, at my request the other day you marked on the chart the place where the barges ended up at the end of their drift after they were torn loose. A. Yes, sir.

Q. We marked it here on the chart together, but I didn't ask you, [245] and I should like now to ask you, to show us where it was that the Barry K went and tied up after the collision. I think you mentioned some Silo Dolphin.

A. Yes, sir. Silo Dolphin, right about here.

Q. Is it so marked? A. Yes.

Q. It is marked on the chart "Silo Dolphin"?

A. Yes. That is right close to the dike. We had a line out on the port side of the bow to the dolphin, and we rested right alongside of this dock. I eased down easy on account of the wind.

Q. That is, the dolphin is on the channel side of the dock? A. Yes, sir.

Q. And you tied up at the dolphin and lay alongside of the dike? A. Yes, sir.

Q. Just for the sake of the record, here, that Silo Dolphin is right close to the rear range light of the Post Office Range?

A. About the middle between the front and rear range, I would say.

(Testimony of Wm. A. Reed.)

Q. Is that a little circle there to indicate the dolphin? A. Yes, sir.

Mr. Wood: Thank you.

The Court: You don't need to come back up here.

Mr. Young: I should like to ask one question in regard to this, however.

Redirect Examination

By Mr. Young:

Q. What is the nature of that dolphin? [246]

A. I think it was a three-pile or four-pile dolphin. It was drove there originally, I think, to keep the stern of the boats that picked up milk off of the dike while they was picking up the milk off of the landing. There was a farmers' landing, there. I think that is originally—I am not sure—I am not acquainted with the history of it. It is right close to that landing.

(Witness excused.)

Mr. Young: Mr. Davis, will you take the stand?

The Court: While he is walking to the stand, Mr. Young, in your opening statement you said that the crossing of the Barry K's signal by the Pennsylvanian was, in itself, negligence.

Mr. Young: That is correct, your Honor.

The Court: What did you mean by that?

Mr. Young: The rules provide that signals shall not be crossed. That means that if the Barry K blew a whistle or a signal for, let us say, a star-

board to starboard passage, and the other ship did not wish to accede to a starboard to starboard passage, it could not answer the two blasts of the Barry K by one blast indicating a port to port passage, but rather would be required to answer with a danger signal, which would indicate then to the Barry K that the other ship did not wish to do what the Barry K asked it to do. [247]

The Court: You evidently do not want to say anything. You do not care to say anything at this time?

Mr. Wood: I was not going to, but inasmuch as your Honor has asked me, I will say there is no occasion here for even a discussion of cross signals, because the Pennsylvanian received from the Barry K a one blast. They say they blew two. Three men on the bridge of the Pennsylvanian, all the navigating officers, heard it as one blast. They answered with one. That does not give rise to a cross signal question at all.

The Court: While you are up, Mr. Wood, do the Inspectors have authority to impose disciplinary penalties other than following accidents? To be specific, I do not know what the fact is, but assuming that the Inspectors held the general view that this channel down here had been deepened and widened by later improvements so as to make no longer necessary its general use on the easterly side by tugboats as formerly,—assuming that river boatmen persisted in following the old practice, do the Inspectors have authority to impose disciplinary

penalties for that use contrary to their opinions?

Mr. Wood: Where there has been no accident?

The Court: Yes.

Mr. Wood: I think they have. I think they can impose penalties on any officer whom they regard as guilty of negligence.

The Court: What is the last word?

Mr. Wood: I think they can impose penalties on any officer whom [248] they have licensed and whom they find has been guilty of negligence, whether an accident has resulted or not. That is my view.

The Court: Guilty of improper navigation?

Mr. Wood: Yes.

Mr. Young: May I make a comment, your Honor, with reference to this matter of the cross signaling? I take it from counsel's answer to your Honor's question that he would concede that if, in fact, there were no controversy about the nature of the whistle blown by the Barry K as being a starboard to starboard passing whistle, that then the pilot of the Pennsylvanian would have no right to answer that whistle with one blast, which would call for a port to port passage.

Mr. Wood: No, Mr. Young. I make no such concession. I don't think the case has anything in it giving rise to even a discussion of cross signals.

The Court: Continue the examination.

HENDERSON B. DAVIS,

a witness produced in behalf of the Libelant, having been previously sworn, resumed the stand and testified further as follows:

Mr. Young: May I have from the clerk the photographic exhibits, please?

Direct Examination

(Cont'd.)

By Mr. Young:

Q. Captain Henderson, I am handing you——

[249]

Mr. Wood: Captain Davis, is it not?

Mr. Young: I beg your pardon. His first name is Henderson. Captain Henderson Davis.

Q. Will you examine Libelant's Exhibit 5, which is a photograph of the Barry K with barges which she was pushing at the time of this accident, showing the manner in which they were lashed to the Barry K. The evidence in this case indicates that the total length of the Barry K and the barges was about 305 feet, that the deck houses on the barges stood about twenty feet above the water, that the deck house on the Barry K extended the greater length of the Barry K, and that up to the top of the pilot house was a distance of about 34 feet. From your examination of that photograph, I will ask you to state what, in your opinion, would be the effect of an easterly breeze of about ten to fifteen miles per hour upon the port side of the Barry K and its barges, assuming it was proceed-

(Testimony of Henderson B. Davis.)

ing upstream, and let us assume that it were over on the west side of the river instead of the east side.

A. Well, it would have a tendency to carry you to the west.

Q. And that is due to what?

A. That is due to the wind on the sides of the barges and the boat.

Q. And in the vicinity of Post Office Bar, if the barges and the Barry K would tend to be carried over toward the west, what hazard might they encounter on the west?

A. Well, you wouldn't want to hold along the west bank on account of if you had to stop there that you would go right in on those [250] piling on the west side.

Q. Those short piling to which you refer, that is the dike that has been mentioned?

A. It is the whole dike that is built along there. I don't know when it was built. It has been there ever since I have been on the river, and if you get over in there with any speed at all you would undoubtedly puncture your barges.

Q. Is there any increased hazard to the river boat if it were using the west side of the river by night as distinguished from by day?

A. Well, if you could use your searchlight along there coming up at night, which would be against the law, if there was a ship coming down, or a river boat, why you could possibly stay two hun-

(Testimony of Henderson B. Davis.)

dred feet off of those piling, but you—it is so dark down in that hole that you couldn't possibly tell how close you were to the piling.

The Court: What did he say? He was against the law?

Mr. Young: To use a searchlight.

A. You can't throw your searchlight into the pilot house of any other boat, where it reflects into the pilot house of any other boat.

Q. Then in your judgment do I understand that there is a greater hazard in using the west side of the river at night than there would be in the daytime?

A. Oh, yes, because you could see the piling in daytime. You [251] could see what wasn't underneath the water.

Q. Now, to what extent is this hazard to which you refer related to the likelihood of passing ocean-going ships going downstream at that point?

A. Well, if you would meet a boat or an ocean vessel coming downstream and you was on the west bank and then there would be another ocean vessel coming upstream, you would be right where the upcoming vessel wanted to be.

Q. Now, suppose that you were traveling upstream along the east shore. Would the hazards to which you have referred still exist?

A. No, because you can go pretty near up to the bank with a river boat.

(Testimony of Henderson B. Davis.)

Q. And would that be true of a river boat which is pushing two barges? A. Absolutely.

Q. What has been your observation as to the range in size of ocean-going ships that one might expect at any time to meet in the Willamette River at this point?

A. Well, you could figure that you would meet boats drawing thirty-two feet of water and in the neighborhood of five hundred feet long, and you can't tell when you see one of those ships coming at night how large they are or how much water they are drawing. It is my opinion that the tug-boats should stay out of the way of the deep-draft boats, because if you are only drawing, say, six feet of water with a river boat, I can't see why the [252] river boat should crowd the deep sea vessel.

Q. With reference to this matter of wind resistance which you mentioned, would there be any protection to the river boat if it were over toward the east shore, which protection might not exist on the west shore?

A. Well, you would be closer to the trees on the east side, and the wind wouldn't be as strong on the east side as it would on the west side.

Q. Are you familiar with the term known as "side-slipping"?

A. Well, side-slipping, you can drive a stern-wheel boat into a bend and they will slip sideways with a tow of barges.

(Testimony of Henderson B. Davis.)

Q. That means a sideways movement of the boat. Is that correct? A. Yes.

Q. Now, is the possibility of side-slipping stronger in the case of a river boat than of an ocean-going steamer?

A. I never piloted an ocean vessel in my life.

Q. Now, in the case of a river boat which is on the outside of a curve, rounding the curve on the outside, what is its tendency with regard to this matter of side-slipping if it is, let us say, going upstream on the outside of the curve?

A. Well, a stern-wheel boat would have more tendency to slip into the bend than a propeller boat would.

Q. Now, if a steamer is coming down the stream, an ocean-going steamer, to what extent would the displacement swell of that ocean-going steamer affect the operation of the river boat going upstream? [253]

A. I know what you mean. Well, if a vessel was coming down under control, there wouldn't be any, but if there was one coming down at high speed through there, like, I will say, that seventy-five per cent of the vessels do, in that 35-foot water, it would suck off the bank, and when the vessel passed why it would then go back towards the bank, the current would. Then on the swing the wheel current or kick-up from that would have a tendency to kick your barges over into that dike.

Q. Now, to what extent is the effect that you

(Testimony of Henderson B. Davis.)

have just described dependent upon the speed of the ocean-going ship?

A. Well, it has always been my impression that an ocean ship is supposed to be under control.

Q. I say, to what extent is the effect of this displacement swell dependent upon the speed of the ship?

A. Well, that would depend on how many feet the ship was drawing.

Q. If the ocean-going ship, say, is traveling ten miles an hour, does it have a greater or less displacement swell than if it is traveling, say, five miles an hour?

A. Absolutely. Take a large ship going down through there ten miles an hour would draw the water ten or twelve feet off each side of the river, like that, especially on the other side, there, where they went close to the dike.

Q. And if it were going faster than ten miles an hour, what would it do in that case?

A. I wouldn't know. I wouldn't want to be there. [254]

Q. Would the hazard that you have referred to be increased, or lessened?

A. It is increased; the faster you go the more it is increased. In regards to the suction of vessels, of deep sea vessels, if I could vary away from that point, I worked at Ridgefield, Washington, which is about two miles and a half away from the Co-

(Testimony of Henderson B. Davis.)

lumbia River, and it will break lines, suction from ocean boats will break lines two miles and a half up the slough, up Lake River.

Q. That is to say, the lines on barges which are at a point two and a half miles from the ocean-going ship——

A. Boat houses, the floats.

Q. And is that a real hazard to river boats on the river?

A. I would say it would be in close quarters.

Q. Well, is that a really serious hazard in the operation of the river boats, that that can happen?

A. Yes, it can happen.

Q. If the lines on the barges are broken, then what do you have to do with your tow?

A. You have to make your tow up again. It is hard to tell where your tow is going to.

Q. And is this problem a more serious one in the nighttime than in the daytime?

A. Well, you can judge the speed of a vessel at daytime and you can't at nighttime.

Q. Would the hazard from displacement swell be greater or less [255] if the river boat is traveling up the east side of the river opposite Post Office Bar rather than the west side?

A. You would be further away. If you are over on the east side you are practically in the clear. You have got lots of room over there.

Mr. Young: You may cross examine.

May I ask the witness one more question, your Honor?

(Testimony of Henderson B. Davis.)

Q. Mr. Davis, are you familiar with the type of lights that are used on barges which are being towed by river boats? I refer particularly to a barge which would be on the nose of the towboat and another one lashed on the port side forward. In the nighttime what lights are customarily used on barges of that sort in the Willamette River?

A. I would put a light on either corner forward and a light on the corner that extends the furthest away from my boat.

Q. How many lights would that be?

A. Three lights.

Q. What color would they be? A. White.

Q. And would they conform to the practice which has existed on the river in doing so?

A. Yes.

Q. How long has that practice existed, to your knowledge?

A. Well, as long as I have been steamboating.

Q. And how long did you say that was?

A. Well, 1917 is what I started in. [256]

Mr. Young: That is all.

Cross Examination

By Mr. Wood:

Q. Mr. Davis, or perhaps I should call you "Captain Davis"—what do they call you?

A. Me? Oh, it is hard to tell. They call me Birch, mostly. That is my middle name.

Q. Well, I will call you "Captain." You have been a towboat captain, haven't you?

(Testimony of Henderson B. Davis.)

A. Yes.

Q. Your whole experience has been with tow-boats, has it not? A. Yes.

Q. You have never been a pilot of an ocean steamer? A. Absolutely not.

Q. And you look on this question from the standpoint of the towboat man, don't you?

A. Yes, sir.

Q. Now, you said that it would be difficult for a towboat coming up on the right-hand side in the nighttime to tell how far she was off that old dike unless she used her searchlight. That was your testimony, was it not? A. Yes, sir.

Q. I want to call your attention to the beacons that there are on that right-hand shore right along the dike. There is one there, isn't there? That is the Post Office Lower, I think they call it. [257]

A. That is the one down in the bend, there.

Q. There is one down here at Gillihan's, isn't there? A. Yes, sir.

Q. And the two range lights of Post Office Bar, itself, are there.

A. Front and rear range lights here.

Q. What is the approximate distance from Gillihan's up the river to the front range light of the Post Office Range?

A. I wouldn't attempt to say.

Q. Can't you give me an idea?

A. No, I never measured it. When I got my license we didn't have to——

(Testimony of Henderson B. Davis.)

Q. Don't you know whether it is a mile or ten miles? A. It is not quite a mile.

Q. All right. That is near enough. Not quite a mile. Well, would you say three-quarters of a mile?

A. Is that particular that I know——

Q. No, not exactly. I will say it is less than a mile, isn't it? A. I would say it is.

Q. You may sit down for your own comfort. So that in a distance somewhat less than a mile there are four Government beacons along the line of that dike on that bank, aren't there?

A. Well, there is only one there that would tell you the distance from that dike. It is right on the dike. The Post Office Bar light in reality is the only light that is right on the dike.

Q. Well, this is true, Captain Davis, is it not, that the dike [258] substantially follows the bank, does it not?

A. Well, not the bank that you could see. It is in the water a little ways from that.

Q. A little ways from the bank. But it follows the line of the bank, does it not? A. Yes.

Q. And the beacons are substantially along the line of that bank, are they not, except possibly the front range of Post Office Bar?

A. Well, there is a dock sticks out down below.

Q. Tell me about the lights.

A. This light here—the Post Office Bar light is the only light that is on the dike.

(Testimony of Henderson B. Davis.)

Q. Well, how far is the light at Gillihan's from the dike?

A. I don't believe that the dike runs down that far, to Gillihan light.

Q. All right. Then we are not concerned with that. How far is the dike from the Post Office Bar Lower? A. That is right at the dike.

Q. Right at the dike. How far is the Post Office Bar Front from the dike?

A. I wouldn't say.

Q. Well, how close?

A. I wouldn't attempt to say.

Q. Only a few feet, is it not?

A. No, I couldn't answer that question because I don't know. [259]

Q. Fifty feet, three hundred feet?

A. I don't know how close.

Q. Don't you admit that those lights are all so placed that an up-coming boat can tell how far she is off that shore?

A. Not if you had to crowd in there, you couldn't tell.

Q. But you could tell, you say, if you used your searchlight? A. Used your searchlight.

Q. But you are forbidden to use your searchlight?

A. That is in any way that it would blind an on-coming vessel.

Q. To what rule are you referring?

A. To the Pilot Rules.

(Testimony of Henderson B. Davis.)

Q. Can you point it out? We have a copy here.

Mr. Wood: I am going to help him, your Honor. I know what it is.

A. It says "forbidden——"

Q. Look on page 34.

A. "Any master or pilot of any vessel who shall flash or cause to be flashed the rays of the searchlight into the pilot house of a passing vessel may be proceeded against in accordance with the provisions of section 4450, R. S., as amended, looking to a revocation or suspension of his license."

Q. All right. That rule forbids the flashing of a searchlight into the pilot house of an approaching vessel?

A. Or rays.

Q. All right. Forbids the rays of the searchlight from being [260] flashed into the pilot house of the approaching vessel. Isn't that it?

Mr. Wood: I will pass that up to your Honor.

Q. That is what it says, does it not?

A. The rays of the searchlight will hit the water and reflect up.

Q. All the rule says is that you must not flash your searchlight into the pilot house of the other man, does it not?

A. It says the "rays."

Q. All right. Now, do you mean to say that if you were coming up here on a tug that you couldn't flash your searchlight off at a right angle toward this bank to see where that dike was without blinding a ship that was coming up here half a mile away from you? Is that what you want——

(Testimony of Henderson B. Davis.)

A. It would have a tendency to blind him; yes, it would.

Q. You admit, do you not, that if you were coming up here and wanted to use your searchlight, you would flash it at right angles out on to the bank where the dike was, would you not?

A. It isn't necessary if you use the other bank to use the searchlight.

Q. Please answer that question. If you were coming up there and you wanted to know where the dike was—here is your ship coming up here like this—you would flash your searchlight off here at right angles on to the dike, would you not, if you wanted to know where the dike was?

A. If you stay over in the tow channel the dike wouldn't concern [261] you at all.

Q. Yes. We are not talking about the tow channel. I suppose you mean the shallow water on the other side.

Mr. Wood: I will ask the Court to instruct him to answer the question.

The Court: Yes. Answer the question.

Q. If you were coming up the west side how would you use your searchlight, if you used it at all, to find the dike?

A. I would use it right straight out from the side of the pilot house.

Q. Right angles? A. Right angles.

Mr. Wood: That is enough.

Q. Mr. Davis,—

(Testimony of Henderson B. Davis.)

The Court: Move the map back, Mr. Bragg.

Mr. Wood: Q. —you testified before the Steamboat Inspectors on the trial of Captain Reed, did you not? A. Yes, sir.

Q. At that time you said you were not working at that time, did you not? A. Yes, sir.

Q. You were out of a job at that time?

A. Yes, sir.

Q. And the last person or company you had worked for prior to that was the Western Transportation Company, was it not? [262]

A. That is right.

Q. And they are the owners of the Barry K, are they not? A. Yes, sir.

Q. How long had you worked for them the last time you worked for them?

A. Oh, I would say approximately eight months.

Mr. Wood: That is all.

Redirect Examination

By Mr. Young:

Q. Is your present work with the Shaver Transportation Company permanent so far as you know?

A. As far as I know, yes.

Mr. Young: I should like to ask this witness one more question I omitted on direct.

Q. In the event that you were proceeding down the Columbia River with a towboat and barge and you were coming up the Willamette River, what

(Testimony of Henderson B. Davis.)

course would you normally expect to follow after you got into the Willamette River?

A. Well, I would stay on the east bank all the way up. Q. You say "all the way up"?

A. All the way up past Post Office Bar clear to the St. Johns bridge.

Q. Now, why would you stay on the east bank all the way up until passing Post Office Bar?

A. Well, there is no use of running back and forth across the channel. [263]

Q. What do you regard as the most hazardous place of passage in the vicinity of Post Office Bar?

A. Well, any place in there, if you got down in there, would be hazardous.

Q. However, you would not cross over—if you come in from the Columbia River and proceed up the Willamette you say you would not cross over to the right-hand side of the Willamette first. Is that right? A. That would be the west bank?

Q. Yes, the west side.

A. No, we don't pass on the west bank at all.

Q. If you did come over to the west side of the river, then as you got up toward the dike which you have mentioned what would you do then?

A. Well, the only thing you could do then would be to cross over at Gillihan's to the east bank.

Q. And then as you got up the stream and past Post Office Bar entirely and were proceeding on up toward Terminal No. 4, what would you then do with regard to the position occupied by your boat on the river?

(Testimony of Henderson B. Davis.)

A. I wouldn't cross over to the west bank again. It wouldn't be necessary.

Q. In any event, if you started your passage up the river following the west bank, that would involve two crossings in order to avoid the hazards in the bend. Is that correct? [264]

A. Yes, it would.

Mr. Young: That is all.

Recross Examination

By Mr. Wood:

Q. Do you claim it is necessary to make two crossings if you cross over to the west bank at the mouth of the river? Do you claim you have to cross back?

A. If you went back to the west bank when you got up above the point of Post Office Bar it would be.

Q. Well, all right. What you mean, as I understand it, is this: if you were coming down the Columbia River from Camas and you turned into the entrance of the Willamette, and if you crossed over and held to the right in accordance with Article 25, that when you got up here further you would have to cross back to the west bank. Is that what you mean?

A. If you stayed on the west bank all the way up.

Q. If you stayed on the west bank all the way up?

A. Yes.

Q. Then you would not cross at all, would you?

(Testimony of Henderson B. Davis.)

A. Yes, but you would be down in the bight there at Post Office Bar where I don't want to go.

Q. All right. Suppose you were coming up the Willamette River from its mouth on the right-hand side, you could keep on that right-hand side all the way up without crossing at all, couldn't you?

A. Not to my idea, and be safe, you could not.

[265]

Q. Suppose you met a towboat coming down and you got a towboat going up. How do you pass?

A. There is all kinds of room. There is worlds of room over there for towboats to pass.

Q. I think there is worlds of room in that channel, too. I agree with you. There is worlds of it, plenty of it; just my contention. Please answer my question. Supposing you were coming up anywhere in that channel, from the mouth of the river up, and you got a towboat, a barge, towing barges, and you met a towboat with a tow coming down. How do you pass?

A. Most generally the towboat that is coming up stays on the east side and the other boat would pass down on the outside.

Q. You think they pass starboard to starboard?

A. Yes, sir.

Q. At what point?

A. At all of the points.

Q. You recognize that is a violation of the rules, don't you? A. Not necessarily.

(Testimony of Henderson B. Davis.)

Q. Do you know that the United States Steamboat Inspectors have actually held that to be a violation of the rules, not in this case but in tow-boat cases? Do you know that?

A. It says when it isn't dangerous.

Q. I want to know whether you know the local Inspectors in this district have found the pilot guilty if doing that.

A. I don't know what pilot they found guilty. They suspended [266] Captain Reed's license for one day. That is all I know.

Mr. Wood: I am not talking about this case.

The Court: Step down.

Mr. Wood: That is all.

(Witness excused.)

Mr. Young: Captain Lowery.

A. T. LOWERY,

produced as a witness in behalf of the Libellant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Where do you live?

A. Portland, Oregon.

Q. And how long have you lived here?

A. All my life.

Q. Would you mind telling us how long that is?

(Testimony of A. T. Lowery.)

A. Fifty-six years.

Q. What is your occupation?

A. Columbia River pilot.

Q. How long have you been engaged in that work? A. Since 1927.

Q. What was your work prior to that time?

A. Running towboats on the river. [267]

Q. And how long were you engaged in that work? A. Since 1902.

Q. And do I understand that your river experience on the Willamette has been from the year 1902 up to the present time?

A. Yes, sir.

Q. As a Columbia River pilot do you handle any vessels other than ocean-going ships?

A. Ocean-going only.

Q. Prior to the time that you were doing that work, however, you were handling what sort of boats? A. River boats, all kinds.

Q. In connection with your work as a pilot, have you become familiar with what is known as Post Office Bar? A. Yes, sir.

Q. How frequently have you had occasion to pass Post Office Bar?

A. Well, on an average of twice a week, maybe three times.

Q. What is the range in size of vessels that you have had occasion to pilot over Post Office Bar? I refer to ocean-going ships.

A. You mean in the length?

(Testimony of A. T. Lowery.)

Q. Length and draft.

A. Well, I have piloted some of the largest that comes in here, 500 to 510 feet long. I piloted one ship down two years ago that drew 33 feet and 2 inches of water.

The Court: Q. 33—2? [268]

A. 33 feet and 2 inches of water.

Mr. Young Q. To the pilot of an ocean-going ship, what is the channel which you follow?

A. 35-foot.

Q. 35-foot channel. What consideration do you give to the 30-foot channel which extends beyond the 35-foot channel?

A. Not whatever. That is out of the channel.

Q. That is what?

A. That is clear of the channel.

Q. That is clear of the channel. To what extent have you had occasion to observe river boats with tows making use of the Willamette River in the vicinity of Post Office Bar?

A. It has always been a practice to keep to the east side.

Q. How many river boats would you say make use of that river? Could you give any estimate?

A. No, I couldn't.

Q. Is it a large, or small number?

A. Well, there is quite a number of them towing up and down there regular, barges, logs.

Q. You mentioned that the river boats stayed to the east side of the river? A. Yes.

(Testimony of A. T. Lowery.)

Q. How long has that been the practice?

A. Ever since I can remember.

Q. During all of the time that you have been on the river? [269]

A. Yes, sir.

Q. That is since 1902?

A. Yes, sir.

Q. Captain, in operating an ocean-going steamer, down the Willamette River and from the city limits of Portland toward the Columbia, what is the practice with regard to the speed of the ocean-going ships at that point?

A. Well, the vessel—various different drafts of vessel—deep draft—I usually run them half-speed until we get out of the Willamette. Vessels of light draft I usually run them around ten knots, ten to eleven knots.

Q. What do you know about the practice of other pilots with regard to the speed at which they proceed?

A. I suppose they do the same thing. I don't know what they do.

Q. Captain, what can you say from your experience both in the handling of river boats and of ocean-going vessels past Post Office Bar as to whether it is safe or practicable for river boats to proceed upstream on the west side of the river at that point?

A. I don't think that it is practical or safe to be over in that bend passing ocean-going ships.

Q. And will you explain your answer?

A. Well, various different reasons. There is a

(Testimony of A. T. Lowery.)

current in the river that naturally sets on that break-water along Sauvie's Island. The wind has a tendency to set a stern-wheeler and barges [270] over on to that, if the wind is blowing from the east. And if there is an up-coming ocean steamer, why he would be very close in passing, there, without the ocean-going steamer got well out in—across the channel.

Q. What is the effect of the displacement——

A. Did you say in-coming? In-coming ocean——

The Court: You are thinking of a tow going down and an ocean steamer coming in.

A. The tow up, ocean steamer coming up, too, both passing in the same direction?

Q. What would be the normal passage that way, both going in the same direction?

A. They would leave the boat and barge to the starboard side.

Q. To her starboard?

A. Yes.

Mr. Young: Q. What would you say as to the river boat coming upstream and meeting the ocean-going ship going downstream? A. Well——

Q. I am referring now to the question as to whether it would be safe or practicable for river boats to proceed upstream on the west side in light of the necessity, from time to time, of passing ocean-going ships going downstream.

A. Well, nothing more than the swell from the ocean-going steamer naturally rolls into the bend harder than it does on the straight-of-way, which would have a tendency to break up the river boat's

(Testimony of A. T. Lowery.)

[271] tow and cause her trouble there in the bend.

Q. Does the extent of the effect of the displacement swell depend at all upon the speed of the ocean-going ship?

A. It depends on the speed, draft, both.

Q. That is to say, the faster the speed and the deeper the draft, the greater the displacement swell?

A. Yes, sir.

Q. Are you familiar with the dike which is in the vicinity of Post Office Bar on the west side?

A. Well, I have seen it there a good many times.

Q. To what extent does that dike present a hazard to river boats which might be traveling upstream on the west side?

A. Originally that dike was built out of piling and rock, filled with rock. The piling now are mostly all rotted away and there is rock scattered around there on the bank.

Mr. Wood: Captain Lowery, will you speak a little louder? I cannot hear you. Raise your voice, please.

Mr. Young: Q. Well, what is your answer with regard to whether that presents a hazard to river boats?

A. I say originally that dike was built, it was built out of piling and rock and brush piled in there, and the piling now are rotted off and the rock and stuff if strewn around in that bend in there on the bank.

Q. Does that make it more hazardous than it was previously?

(Testimony of A. T. Lowery.)

A. It would if there was no rock in there. You don't know what [272] is in that bend now.

Q. What is the effect on the operation of a stern-wheel river boat proceeding upstream on the outside of the curve at the river in that point, assuming that it is traveling over toward the west shore. What is the tendency of the ship with reference to side-slipping?

A. Well, stern-wheelers, light draft, the wind has more effect on her.

Q. Would you say that a 10- to 15-mile breeze from the east at that point would have an effect upon the operation of a stern-wheeler with barges in tow, which barges have deckhouses about twenty feet high?

A. I would say, yes, some.

Q. Now, to what extent, if any, would the hazards that you have mentioned exist with respect to a river boat traveling up the river at this point on the east side?

A. The river boat traveling up the river on the east side, he is over next to the other shore. He is in shoaler water and he can get further away from the channel.

Q. Do you know about how much shoal water there is on the east side at this point which the river boat could be in and be in the clear of the main ship channel?

A. Approximately four hundred feet.

Q. And in your view is it safe for an ocean-

(Testimony of A. T. Lowery.)

going ship to travel anywhere within that four hundred feet from the east shore? [273]

A. It is not if she is drawing any water, as she would be considered out of the channel if she was in that four hundred feet.

Q. Captain, are you familiar with Article 25 of the Pilot Rules referring to steam vessels' use of narrow channels?

A. I am.

Q. What is your view as to whether or not that Article 25 is absolute and always gives to a steam vessel going down the stream at this particular point the absolute right to make a passage port to port?

A. I think conditions has a lot to do with that.

Mr. Wood: A little louder, please, Captain.

A. I say conditions have a lot to do with that. If you think it is unsafe and impracticable, I think you can vary from those rules.

Mr. Young: Q. In other words, if you are taking an ocean vessel down the channel of the Willamette River past Post Office Bar, in light of the circumstances which you have indicated as to the dangers to a river boat in using the west side of the stream, would that be a factor which would have a bearing upon your duty in the operation of the ocean ship?

A. I don't understand your question.

(The last question was read by the reporter.)

A. I don't understand your question.

Q. Let me reframe the question. Suppose you are traveling down the channel with an ocean-going

(Testimony of A. T. Lowery.)

ship, and you meet a river boat coming upstream. Under Article 25 would you regard yourself as [274] within the limits of Article 25 if you signalled for a port to port passage?

A. If the river boat was coming upstream?

Q. Yes.

A. In what position?

Q. On the east side.

A. If the river boat was well to the east side I would keep him on the starboard side and disregard the rules.

Q. You would keep him on your starboard side?

A. Yes, sir, and disregard the rules.

Q. And why would you do that?

A. I wouldn't want that river boat crossing my bow.

Q. Are you familiar with the term "kick water"?

A. Well, that is current from the propeller, yes.

Q. Suppose that an ocean steamer puts on a right rudder. What is the tendency with respect to the kick water as to the direction that it will take?

A. It will throw half of it off to one side and the other half straight back, as a rule. If she has a swing in her, it acts a little bit different.

Q. Captain, assume that in the nighttime you were proceeding down the channel past Post Office Bar and you saw coming from the opposite direction on the east side of the river some vessel with two white mast lights, and you could see also either

(Testimony of A. T. Lowery.)

her red or green side lights, and, in addition, down near the water's [275] edge forward you could observe at least two white lights. What would you understand was the identity of that boat that was approaching you?

A. I would consider that was a tug with barges alongside or ahead.

Q. And what can you say as to whether or not the use of white lights on the forward corners of the barges which are either on the nose of the tug-boat or lashed to either port or starboard side is common practice in the river? A. It is.

Q. And what color are those lights?

A. White.

Q. Do pilots here in the Columbia and Willamette rivers understand that those are the lights that are ordinarily used?

A. As far as I know, they do.

Mr. Young: You may cross examine.

Cross Examination

By Mr. Wood:

Q. Right on that last question about what lights should be on the barges, do you know what Pilot Rules, Inspectors' Rules, rather, govern that question?

A. I have read it in the Pilot Rules, yes.

Q. Could you point them out to us? We have the Pilot Rules here. A. I have no glasses.

Q. You mean it is impossible for you to read at the present time without your glasses?

A. I have to have glasses to read. [276]

(Testimony of A. T. Lowery.)

Q. Would you recognize the rule if I read it to you? A. Possibly would.

Q. Is the rule the same for barges as it is for scows?

A. I don't know what classification you would put scows and barges or anything else in.

Q. I haven't asked you that. I asked you whether the rule is the same for them.

A. I have an idea it is.

Q. How would you classify these craft that the Barry K was towing?

A. Well, I would class them as barges.

Q. Barges. I will ask you if this is the Inspectors' Rule about lights on the barges. "Barges or canal boats shall, when being propelled by pushing ahead of a steam vessel, display a red light on the port bow and a green light on the starboard bow of the head barge or canal boat, carried at a height sufficiently above the superstructure of the barge or canal boat as to permit said side lights to be visible; and if there is more than one barge or canal boat abreast, the colored lights shall be displayed from the outer side of the outside barges or canal boats." Is that the rule about barges?

A. Isn't that rule in regards to when the steamer's lights is not visible over the top of the barge?

Q. No, I think not. Do you think that is the rule, or not?

A. I wouldn't say that is the rule. I think when a steamer's side lights in visible over the structure

(Testimony of A. T. Lowery.)

of a barge, I don't [277] think it is necessary to carry your additional side lights on your barges.

Q. Now, do you know what the rule is for scows?

A. Practically about the same, as far as I know.

Q. No, it is very different. At least I understand it is. I will ask you if this is the rule for scows: "Scows when being towed by steam vessels on the waters covered by the first paragraph of these rules shall carry a white light at each end of each scow, except that when such scows are massed in tiers, two or more abreast, each of the outside scows shall carry a white light on its outer bow, and the outside scows in the last tier shall each carry, in addition, a white light on the outer part of the stern. The white light shall be carried not less than 8 feet above the surface of the water, and shall be so placed as to show an unbroken light all around the horizon, and shall be of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least 5 miles." Is that the rule for scows?

A. That is the rule we have always followed, either scows or barges.

Q. That is? A. Yes.

Q. Then you think the lights should be visible five miles, do you?

A. Well, from two to five miles.

Q. Let's get that. The rule says it shall be visible five miles, does it not? [278]

A. Well, it is better all around if they were visible ten miles.

(Testimony of A. T. Lowery.)

Mr. Wood: I will have to ask the Court to instruct him to answer that question.

The Court: Well, is this cross examination?

Mr. Wood: Yes.

The Court: As to what?

Mr. Wood: Cross examination about lights.

The Court: I will have to interpret the rule in the last analysis.

Mr. Wood: Well, the witness has testified as far as the practice on this river goes the lights are the same for either scows or barges.

The Court: He did not say that first.

Mr. Wood: But he said it now.

Q. That is what you said, is it not, Captain? Is that not what you testified to?

A. Practically the same, yes.

Mr. Wood: All right. Then I read in the rule for lights on scows——

The Court: What is the question?

Mr. Wood: Q. Well, the question is, should not the white lights carried on barges or scows on this river be visible five miles and show all around the horizon?

The Court: To comply with the rules?

A. No, they shouldn't, not all around the horizon. [279]

Mr. Wood: Q. Leave out "all around the horizon," then. Shouldn't they, to comply with the practice of this river and the rule, be visible five miles?

A. They should be visible from two to five miles.

(Testimony of A. T. Lowery.)

Q. Do you mean that is in accordance with the practice on the river, or that is in accordance with the rule?

A. That is in accordance with the practice on the river.

Q. But not in accordance with the rule, is it?

A. I don't know about accordance with the rules. That is in accordance with the practice on the river for years.

The Court: Q. There are not many places on the river where you can see five miles, are there?

A. No. There are some places, very few straight-of-ways that you can see a distance of five miles. It is mostly curves which shut out your vision.

(The last answer was read by the reporter.)

Mr. Wood: Q. I should like to stand up this close to him because I cannot hear. Captain Lowery, from 1902 to 1927, you were a river towboat man, here, weren't you? A. I was.

Q. Can you tell me whom you worked for, or did you work for yourself?

A. I worked for the Willamette-Columbia River Towing Company. I worked for the Crown Willamette Paper Company.

Q. And the Crown Willamette Paper Company——

A. Western Transportation Company. [280]

Q. ——is the Western Transportation Company, is it not? They are the same, in effect. Is that true?

A. How is that?

(Testimony of A. T. Lowery.)

Q. The Western Transportation Company is the subsidiary company of the Crown Willamette and does its towing? A. Yes.

Q. And you worked for the Western Transportation Company?

A. I did. And I worked for Shaver Transportation Company and I worked for Smith at Rainier.

Q. And are you a member of the Columbia River Pilots Association? A. I am.

Q. And is it a fact that most of you men in that association have come up from the towboat school?

A. It is.

Q. Now, you mentioned this old dike and the rock that had originally been piled behind it. You evidently are familiar with the history of it. Do you know who built it?

A. United States Engineers, according to my understanding.

Q. Yes. They built it there as an aid and improvement to navigation, did they not?

A. To keep the bank from sliding.

Mr. Wood: Yes.

The Court: What was intended? What was sought to be accomplished by it?

Mr. Wood: He says to keep the bank from sliding into the channel. [281]

A. It was to keep vessels from washing the bank down into the channel. It was a protection for the bank.

The Court: Q. Rather than for deepening the channel?

(Testimony of A. T. Lowery.)

A. Yes.

Mr. Wood: Q. No, is this not a fact? They dredged the channel there at Post Office Bar and then to keep the bank from sluffing down into the dredged channel they built the dike along the bank?

A. That is right. It was built there originally before they dredged, and afterwards they dredged it. This dike protects the wash of the bank from sliding into the river. That is what it was originally intended for.

The Court: Q. Keeping it from shoaling into the water?

A. Yes, exactly. To keep it from sliding into the river and shoaling it up.

Mr. Wood: Q. Now, is the substance of your testimony, as you gave it, here, that the up-coming tugboat and tow, if she elects a starboard passage, should keep over in the shoal water entirely out of the ship channel?

A. She should keep clear out of the ship channel. That was customary. We always followed it. In coming up, we would keep clear out of the ship channel as far as we could.

Q. Yes. So that if the up-coming towboat blows two blasts, the obligation on her is to keep entirely out of the channel, is it not?

A. It is to keep as far out of the channel as possible. [282]

Q. Well, you said there are four hundred feet of shoal water there, so it is possible for her to keep over next to the bank, is it not?

(Testimony of A. T. Lowery.)

A. To keep over as far as she can to keep out of trouble, yes.

Q. Well, a towboat like the Barry K with two barges in tow, if she should keep over as far as she can, she should keep over in that shoal water, should she not?

A. Yes, to the shoal water side, yes.

Q. And in the shoal water? A. Yes.

Q. That is her obligation on that kind of a passage?

A. That is what I would figure on making that kind of a passage, to keep well out of the channel if possible.

Q. Do you understand, Captain Lowery, that when a vessel in a narrow channel blows two blasts, it is only an initial request on her part that the other vessel accede to it? Do you understand that?

A. Yes, sir.

Q. It is just an invitation to the other ship to pass starboard to starboard, is it not?

A. It is to indicate that he wants to pass starboard to starboard, yes.

Q. And it is an invitation to the other ship to accept that proposal, is it not?

A. He can accept it or he can call the other man down and reverse [283] his signals, but he can't reverse them without blowing him a danger whistle.

The Court: Without which?

A. Without blowing him a danger whistle.

Q. Four whistles?

A. Four whistles, and then reverse his whistles.

(Testimony of A. T. Lowery.)

Mr. Wood: Q. Now, I was struck by one answer you made. You said that Article 25 requires vessels to keep to their own right-hand side, but you can vary from the rules. You said something like that. A. Yes.

Q. What did you have in mind when you said that you can vary from the rules?

A. Well, if I should figure that it would be dangerous on that side or become involved in the collision or anything, I could cross over as long as it was safe on the other side.

Q. There is a rule that covers that specifically, is there not? A. I think so.

Q. What? A. I think so.

Q. It is the "Special Circumstance" rule, is it not? A. Yes.

Q. Do you know the number of it?

A. No, not right offhand. I have read it.

Q. Is it not Rule XI? [284]

A. I think so. I am not sure. I have heard it read a good many times.

Q. Anyway, that is the rule that you have in mind when you say that it is permissible to vary from Article 25? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, does not Rule XI—

Mr. Wood: Pass that to the Court. I will use my copy.

Q. —read this way: "In obeying and construing these rules due regard shall be had to all Dan-
gers of Navigation and Collision and to any Special

(Testimony of A. T. Lowery.)

Circumstances which may render a departure from the above rules necessary in order to avoid immediate danger''? A. Yes, sir.

Q. In other words, to come under that rule, the danger to be avoided must be immediate, must it not?

A. Well, it can be immediate, or if you are navigating with a boat and barges and you think it might be dangerous I don't see why you shouldn't vary from those rules. That is your own opinion.

Q. Well, that is a matter for the Court. Now, I wanted to ask you about your testimony. If you were on an ocean-going steamer coming down at night, and an up-coming towboat blew you, and he was well to the east side, you would keep him there. That is what you said, was it not?

A. Yes. [285]

Q. I want to ask you if you are on an ocean-going steamer up here coming down on the Post Office Bar range on the upper end of the range here about where I am pointing, and you see a ship, a towboat—I will begin again, because you did not see where I was pointing.

Mr. Young: How about counsel for libelant?

Mr. Wood: Oh, he is not so important.

Mr. Young: He doesn't count.

Mr. Wood: Q. Can you see the chart?

A. Yes.

Q. Can you recognize these two as the Post Office Range lights? A. Yes.

Q. And this is the Post Office Lower light?

(Testimony of A. T. Lowery.)

A. Yes.

Q. And Gillihan is down there?

A. Yes, sir.

Q. Now, if you were on an ocean-going steamer coming down up here on the range, the upper end of Post Office Range where I am pointing, and you saw the lights of a towboat down here, say, perhaps a mile below you in the bend, four thousand feet below you, anywhere down in there, can you tell at that distance whether that towboat is on the east or west side of the river?

A. Not exactly. You wouldn't be sure.

Q. That is what I thought. Take the stand again, please. You testified before the Steamboat Inspectors at Captain Reed's trial, did you not? [286]

A. Yes, sir.

Q. I want to refer to two or three pages of your testimony there and ask you whether you still agree with it.

Mr. Young: What page?

Mr. Wood: I am referring first to page 91. Well, I will not read that because he has already testified to the same thing that the up-coming ship is obliged to keep in the shoal water.

The Court: Who reported that hearing?

Mr. Wood: This was reported in part by the regular office reporter that the Steamboat Inspectors have and then Mr. Young was not satisfied with that, quite, and he got in Mr. Shoemaker, was it not?

Mr. Young: Well, I object to the manner in

(Testimony of A. T. Lowery.)

which counsel has stated. This counsel knows very well what happened at the time. The regular reporter for the Inspector was quite unable to take down the testimony with any degree of rapidity, and it became very difficult for both counsel and the Inspector to be certain whether the reporter was making an accurate transcript, and I therefore did suggest that we should get another reporter, and counsel, himself, was perfectly agreeable to it being done, and it was done, and Ray Shoemaker was the man who took the testimony.

Mr. Wood: Well, I do not know why you are irritated at what I said. The fact is——

The Court: Well, now, I understand. [287]

Mr. Wood: The fact is that Mr. Shoemaker took the last part of it.

Mr. Young: Counsel seemed to think I was running the whole show. As a matter of fact, he was quite as interested in getting an accurate transcript as I.

The Court: I imagine it was even Stephen.

Mr. Young: That is all I am calling for, is even Stephen.

Mr. Wood: As a matter of fact, Mr. Shoemaker was employed by Mr. Young. I had nothing to do with it.

Mr. Young: What counsel means is that we paid the bill, but he was the official reporter.

Mr. Wood: Q. I am going to begin to read at the top of page 92, Captain Lowery, and ask you

(Testimony of A. T. Lowery.)

whether this is what you testified to, and then I will ask you whether you still agree with it. The question by the Inspectors:

“Q. According to your experience on an ocean ship coming down the river what was the obligation as to the side of the channel you are sailing on?

“A. To keep to the starboard or right side, in the middle of the channel.

“Q. Approaching Post-office Bar what is your obligation?

“A. To keep to the channel, or a little to the right side of the middle of the channel.

“Q. To keep to the right-hand side?

“A. Or the middle of the channel.

“Q. Suppose then, captain, you are approaching Post-office Bar on this ocean ship and keeping to the right-hand side of the channel, and supposing you meet this tug boat who is on the left-hand [288] side of the channel, which vessel is the obligated vessel to get out of the way?

“A. Well, the one that has the other on the portside.

“Q. Which vessel would be that in this case?

“A. It depends on the distance apart they are.

“Q. Supposing they are within three-quarters of a mile of each other, and in this position, which one is the obligated one?

(Testimony of A. T. Lowery.)

“A. I would say the river boat, according to the custom of the river there; the river boat would follow the course of the river.

“Q. But which one is the obligated?

“A. According to the law, the ship would be,—would have the right-of-way.

“Q. Therefore, you recognize, then, that the river boat going up on the left-hand side of the river, has to keep away from the ocean boat, is that true?

“A. According to law, yes. To avoid a collision you can vary from that law, too.

“Q. She has to keep away from the ocean boat, does she not?

“A. Ordinarily do, yes.

“Q. Suppose she fails in her efforts to keep away from the ocean boat, then who is at fault?

“A. Well, I don't know. In what way?

“Q. If she fails to carry out her obligation and a collision follows, then who is at fault?

“A. Well, I wouldn't see any basis for a collision there if the river boat follows the river bank.

“Q. Will you please stick to the question? Read the question.

“The Reporter: (Reading) “If she fails to carry out her obligation and a collision follows, then who is at fault?

“A. The river boat.

“Q. (by Ins. Joachim) The river boat would be at fault?

(Testimony of A. T. Lowery.)

“A. Yes.” [289]

The Court: Who asked those questions?

Mr. Wood: The Inspector, Captain Joachim.

Q. Now, did you so testify? A. I did.

Q. And do you still agree with that?

A. I still agree with that. The river boat should get out of the way. That refers to the channel.

Mr. Wood: I know.

That is all.

Redirect Examination

By Mr. Young:

Q. Captain Lowery, in the testimony which counsel read to you, I wanted to repeat just one of the questions and one of the answers.

“Q. According to your experience on an ocean ship coming down the river what was the obligation as to the side of the channel you are sailing on?

“A. To keep to the starboard or right side, in the middle of the channel.”

Now, keeping to the starboard or right side in the middle of the channel would place your down-going ocean steamer, say, how far from the east bank in the vicinity of Post Office Bar?

A. Approximately 550 feet.

Q. And would that still give ample clearance for the river boat to pass going upstream following the east shore?

A. In my opinion, yes. [290]

Q. When you testified here that the river boat should go over into the shoal water, throughout

(Testimony of A. T. Lowery.)

what distance from the east bank would you regard that shoal water to commence?

A. Four hundred feet.

Q. Four hundred feet? A. Yes.

Q. Then if the Barry K at the time of this collision was, let us say, two hundred feet from the east bank, would you regard it being in shoal water, within the meaning of your answer?

A. Clear of the channel, yes.

Q. Clear of the channel? A. Yes, sir.

Q. And when you speak of "channel," you refer to which channel? A. 35-foot contour.

Q. In answer to questions put by counsel you have stated that the dike was built by the United States Engineers on the west side of the bend opposite Post Office Bar in order to prevent washing away of the bank. Is that correct?

A. That is originally what it was built for.

Q. Yes. Is there any reason why, at that particular place, there should be more washing away of the bank than at other places along the river?

A. On account of the swells of ocean-going ships when they are coming down there, washing in there. The current in the river cuts in there. It washes in there. The current goes right down [291] against that bank and washes around in there. It always cuts away after a freshet in the river.

Q. Why does the current tend to cut away the bank more at that place than at other places, however?

(Testimony of A. T. Lowery.)

A. It doesn't. There are other places in the river that it will cut away as much as that, but it is diked, too.

Q. Does the fact that there is a bend in the river at this point have anything to do with this washing away?

A. It does. It does on any bank.

Q. In reading to you the Pilot Rules with regard to lights on barges and scows, I will ask you whether you have read the second paragraph on page 22 of the Pilot Rules which reads as follows: "When nondescript vessels known as scows, car floats, lighters, barges or canal boats, and vessels of similar type, are towed alongside a steam vessel, there shall be displayed a white light at the out-board corners of the tow." Have you read that article?

A. I have. I have read that book through.

Q. Is there any certainty among the people on the river as to precisely what those Pilot Rules mean with regard to lights on barges, scows, and lighters?

A. Not to my knowledge.

Q. Counsel inquired as to whether you had graduated up from a river pilot to a Columbia River pilot. I will ask you whether or not in your judgment, experience as a river pilot tends to [292] make you more efficient as a pilot of ocean-going vessels?

A. That is the way they figure it.

(Testimony of A. T. Lowery.)

Q. It is a pretty good school to go through first. Is that the idea?

A. I think so. I think I went through as good a school as any of them.

Q. With reference to the pilot rule which counsel referred to, of a scow having a light on it which could be seen five miles all around the horizon, at the particular place where this accident occurred, is there any place in through there where the pilot of one vessel would have an opportunity to see the other ship for a distance of five miles or anything like that? A. No, sir.

Q. Assume that the Barry K, let us say, were in a position near Post Office Bar 3 light where I am now pointing on this map, and the Pennsylvanian were away up on the Post Office Range in the position that I am here indicating on the Engineers' map, could you give any estimate as to the distance it would be possible to see across there, having in mind the existence of the bend?

A. No, I can't give any distance. I can measure it on the chart, there.

Q. Would you do that, please?

A. You can measure it on the chart.

Q. In other words, you are satisfied with whatever the chart shows on that? [293]

A. Yes.

Mr. Young: Very well. That is all.

Mr. Wood: If your Honor please, I should like to ask him a few more questions on a subject I did not cover.

(Testimony of A. T. Lowery.)

Recross Examination

By Mr. Wood:

Q. Captain Lowery, I think you testified about some especially large steamer that you piloted down there, drawing thirty feet or something like that?

A. 33 feet and 2 inches.

Q. That is an exceptionally large ship, is it not?

A. She is.

Q. And that is an exceptional draft in this river, is it not?

A. It is.

Q. The ordinary draft of laden ocean steamers going out of this river is perhaps about 24 feet? That is a fully loaded ship.

A. Twenty-seven feet, Mr. Wood.

Q. What?

A. Twenty-seven feet. You take the average of twenty-seven.

Q. Very well. Twenty-seven feet. And the 30-foot channel was designed for that class of navigation, was it not?

A. The Government Engineers only maintain a 35-foot project.

Q. Now?

A. And a 500-foot width.

Q. That really is byplay. What I was coming to was this: can [294] large steamers, large ocean steamers such as the one you have described, navigating the river, there, especially if they are going down with the current, they are not so easily handled as a river boat with a tow, are they, with a barge alongside?

A. No, sir.

(Testimony of A. T. Lowery.)

Q. They are much harder to handle, are they not? A. Yes, sir.

Q. They certainly are. And river steamers—I mean ocean steamers—regardless of their size, meeting at Post Office Bar, always pass port to port, do they not?

A. Ocean-going ships, yes.

Q. And they always have, have they not?

A. Yes, sir; to my knowledge they always have.

Q. Even when the channel was only 500 feet wide they passed port to port there?

A. Yes.

Q. And even when it was only 300 feet wide they passed port to port there? A. Yes, sir.

Q. And now the 30-foot channel is about 800 feet wide there, and the 35-foot channel is about 700 feet there?

A. Lower Post Office Bar, the 35-foot project runs 625 feet. At the upper end it runs 700 feet, where you make the entrance.

Q. And the 30-foot channel, according to the legend on this chart, is 8— [295]

A. We don't recognize the 30-foot channel. Pilots don't recognize that.

Q. Now, ocean-going steamers there pass port to port. Suppose the tugs with heavy tows, river steamboats with heavy tows—I do not mean log rafts, I mean barges or scows, laden—suppose they meet there, one coming up and the other coming down. How do they pass?

(Testimony of A. T. Lowery.)

A. I don't know. We used—we used to pass portside too, keep well over on the east side. We always towed on the east side.

Q. But the tugs and tows, there, when they meet they pass port to port, do they not?

A. On the east side. We used to do it. I don't know what they are doing now. I don't know what their practice is now.

Q. Well, when your experience ceased they were still passing port to port?

A. They were. Sometimes they would pass starboardside too, but not very often.

Q. So that an up-coming river boat with laden barges, if she met a down-coming river boat with a tow, she would go up on the right-hand side, would she not?

A. She would.

Mr. Wood: That is all.

A. She would keep the other one on her port side.

Mr. Wood: That is all. [296]

Redirect Examination

By Mr. Young:

Q. Did I understand you to state that the average depth of an ocean-going ship using this river is about 27 feet?

A. The average all the way through, yes. It runs about 26 to 27 feet.

Mr. Wood: Q. That is a fully laden vessel?

A. Yes, fully laden.

Mr. Young: Q. Is it safe for an ocean-going

(Testimony of A. T. Lowery.)

vessel drawing 27 feet of water to be using that 30-foot channel?

A. I wouldn't consider it so.

Q. Why not?

A. Because obstructions on the bottom, such as logs.

Q. Even though the channel is called a 30-foot channel, what is the fact as to whether there may be irregularities in the bottom that would present a hazard?

A. Well, there could be irregularities, an irregular bottom, and you might strike a lump in there that is not dredged. It is not taken care of by the Government Engineers.

The Court: Q. They just take care of the 35-foot?

A. They just take care of the 35-foot projects, and not the 30.

Q. So in time that 30-foot water would not be 30-foot water?

A. No, it is subject to fills.

Mr. Young: Q. Do you know how recently there has been any dredging in the vicinity of Post Office Bar? [297]

A. Well, it was either a year ago or two years ago, one of the two. I don't remember now. I know there was a dredge in there cutting out.

Mr. Young: That is all.

Mr. Wood: What rule on page 22, Mr. Young, did you purport to read? I can't find it.

(Testimony of A. T. Lowery.)

Mr. Young: 28, the page is.

Mr. Wood: 28. Oh.

Recross Examination

By Mr. Wood:

Q. Captain Lowery, counsel read to you this paragraph in the Inspectors' regulations on page 28: "When nondescript vessels known as scows, car floats, lighters, barges or canal boats, and vessels of similar type, are towed alongside a steam vessel, there shall be displayed a white light at the out-board corners of the tow." Do you remember his reading you that? A. Yes.

Q. What did you say about that? Did you say that was the rule here?

A. That is the rule we have been using here, yes. They have been using a white light on each outside corner forward and aft on it.

Q. Isn't it a fact that that rule as promulgated by the Inspectors applies to lights for barges and canal boats in tow of steam vessels on the Hudson River and adjacent waters and Lake Champlain? Page 26. Is that right, or do you know?

A. Well, it might be. [298]

The Court: He would have to look that up.

Mr. Wood: I guess he would. Anyway, your Honor will see——

A. Well, that is——

Mr. Wood: ——it does not apply to these waters at all.

That is all, Captain Lowery.

The Court: Step down again. Thank you.

(Testimony of A. T. Lowery.)

Redirect Examination

By Mr. Young:

Q. In other words, what they are using out here are the rules that do apply on the Hudson River. That is the answer, is it not?

A. Yes, sir; the customary rules to us.

The Court: That is all.

(Witness excused.)

Mr. Young: Mr. Raymond Peck.

The Court: Mr. Wood, Jr., what was the name of that case where those boys were in a small boat on a Sunday?

Mr. Erskine B. Wood: Constance Chandler.

The Court: What was the other party's name?

Mr. Erskine B. Wood: I do not remember it right this instant. The suit was against the SS. Constance Chandler.

The Court: Will you get me the title of that case and will you get it so I will have it tomorrow morning? Of course, you go down to the beach tomorrow morning while the rest of us stay [299] here. Send them up by your father, will you, the decisions that you gave me in that hearing about the admissibility, about the competency of Inspectors' conclusions in cases of this kind? We used an Inspector's report in that. That is in evidence in that case.

Mr. Erskine B. Wood: I remember we did, yes.

The Court: And you cited me some A B—what do they call them?

Mr. Erskine B. Wood: A. M. C.

The Court: One or more, proving the competency of those reports as advisory.

Mr. Erskine B. Wood: Yes, I think I can find that.

The Court: If I had the name of the case I could find them out of my own file, but without that other party's name I cannot do it.

Mr. Erskine B. Wood: Lang.

Mr. Wood: Lang against the Constance Chandler.

Mr. Young: I presume counsel will supply me with a copy of the decisions, also, your Honor.

The Court: If he does not, I will give them to you.

RAYMOND P. PECK,

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Where do you live? [300]

A. 2324 Southeast Ivon Street.

Q. What is your occupation? A. Mate.

Q. Employed by whom?

A. Western Transportation Company.

(Testimony of Raymond P. Peck.)

Q. How long have you been with the Western Transportation Company?

A. About nine years.

Q. What license do you carry?

A. Mate of inland steam vessels.

Q. That is a Federal license? A. Yes.

Q. And you have held that since what time?

A. 1925.

Q. Were you on board the Barry K the night it had its collision with the Pennsylvanian on February 1 last?

A. I was.

Q. And was your position that of mate at the time?

A. Yes, sir.

Q. Were you on watch at the time the accident happened?

A. No, sir.

Q. When did you go off watch?

A. I think just above the Interstate Bridge.

The Court: Are you going to produce that other man, the lookout who went back to call the crew? He is here, is he?

Mr. Young: Oh, yes. [301]

Q. What was that?

A. Just above the Interstate Bridge at Vancouver.

Mr. Wood: What happened above the Interstate Bridge?

Mr. Young: He went off watch at that time.

A. Went off watch at that time.

The Court: This is one of the men that the lookout went to call?

(Testimony of Raymond P. Peck.)

Mr. Young: Yes, that is right.

Q. Mr. Peck, when you went off watch, what did you do?

A. I think I went back to the galley and got a glass of milk and went to bed. I think we were just going through the Railroad Bridge when I went to bed.

Q. What is the last that you remember then before the accident happened?

A. Well, we had gone through the Railroad Bridge before I had gone to sleep, because I heard the exhaust, the vibration of the exhaust of the bridge.

The Court: A little louder, a little louder, so that Mr. Wood can be sure to hear and I can hear, too.

Mr. Young: Q. Where was your room on the Barry K where you went to bed?

A. Just aft, below the pilot house, and a little aft on the port side.

Q. Can you show the Court that position by examining Libelant's Exhibit 5? [302]

A. Yes. It would be the second window.

The Court: Counsel had better see this.

A. This is right by the door. That is the window in the door.

Mr. Young: Q. Which deck is that?

A. That is the promenade deck, the main deck.

Q. That is the deck above the deck which is at the water line?

(Testimony of Raymond P. Peck.)

A. The lower deck is the cargo deck.

The Court: Show Mr. Wood the window again.

A. This window right here.

Mr. Young: Did your Honor see that?

The Court: Yes.

Mr. Young: Q. After going to sleep, what do you next remember?

A. Well, what woke me up was the danger signal.

Q. And the danger signal by what boat?

A. The Barry K.

Q. How many blasts was that?

A. Four or more.

Q. When you heard the danger signal, what did you do? A. I walked out on deck.

The Court: Q. What do you mean, "four or more"?

A. I think there was four. I heard four.

Q. Were those given rapidly?

A. Rapidly.

Q. A good deal like a danger signal on a railroad train? A. Yes. [303]

Mr. Young: Q. Did you hear any further signals from the Barry K?

A. Yes. After I had gone back to my room I did.

Q. What did you hear then?

A. I heard starboard passing whistles and danger signals and three whistles last.

Q. In other words, you heard four sets of whistles. Is that correct?

(Testimony of Raymond P. Peck.)

A. I think that is correct. I don't just remember what rotation they went in, but I heard danger signals and starboard passing signals and——

Q. When you went out on deck, which side did you go out on? A. Port side.

Q. What did you see?

A. I looked across the bow and I seen the lights of a ship, and I run back to my room and put on my clothes.

Q. How far away was that ship when you saw it?

A. Well, I couldn't say. Probably a thousand feet.

Q. What lights did you see?

A. I didn't notice any lights on it. I just seen lights and that was all.

Q. You just saw lights generally but didn't identify them? A. No, I didn't.

Q. What would you say was the approximate position, if you know, of the Barry K with reference to the east shore of the river at that time?

[304]

A. Well, she was running towards the east shore.

Q. Could you from where you were determine how close you were to the shore?

A. Not exactly, but I should say around 200 feet.

Q. Was the Barry K in motion when you went out on the deck?

(Testimony of Raymond P. Peck.)

A. She was in motion when I went out on deck.

Q. Did you notice any change in the speed of the Barry K?

A. Not at that time.

Q. Did you later? A. Yes.

Q. When?

A. After he had blown the three whistles.

Q. And then what happened?

A. Well, she began to slacken her speed.

Q. Did you hear any whistles from the approaching steamer? A. I did not.

Q. They may have been blown and you not have heard them?

A. That is right. They could have been blown.

Q. Are you sure that you heard all of the whistles blown by the Barry K?

A. I think I did. The first I heard was the danger signal. She must have blown a starboard passing whistle before that.

Q. You did not hear that, however?

A. No.

Q. Now, where were you at the time the collision occurred? [305]

A. I was in my room.

Q. And what did you do after that?

A. After the collision occurred?

Q. Yes.

A. I went down on deck to see if there was any damage done to the boat.

Q. At the time you went down on deck, did you see the Pennsylvanian then?

(Testimony of Raymond P. Peck.)

A. The Pennsylvanian was still pushing the Barge No. 22 across our nose.

Q. You did not see the collision, itself, did you?

A. No.

Q. What was the position of the Pennsylvanian in the stream at that time?

A. She was headed across pretty sharply towards the east side.

Q. Was she in contact with one of the barges?

A. She was in contact with Barge No. 22.

Q. And where was Barge 22 in relation to the tug?

A. Barge 22 was just a little bit off the port bow that she was pushing.

Q. Had it broken loose from the tug?

A. It had broken loose from the Barry K.

Q. Did you watch the course of the Pennsylvanian after that? A. I did not.

Q. At this particular time did you notice where you were with [306] reference to the east shore?

A. No, I didn't.

Q. What did you do then?

A. I went down in the hold the first thing.

Q. What did you do down there?

A. I looked to see if there was any bad leaks.

Q. Did you find any?

A. A small one in the stem.

Q. How long did you remain down below?

A. Oh, probably ten or fifteen minutes.

Q. When you came up, where was the Barry K then?

(Testimony of Raymond P. Peck.)

A. The Barry K was going across the river.

Q. Toward which side?

A. Towards the west side of the river.

Q. Did you see the Pennsylvanian then?

A. I did not.

Q. Did you see either of your barges?

A. No, I didn't look for the barges at that time.

Q. What did the Barry K do when she got across the river? A. She tied up.

Q. Where?

A. At the dolphin. She grabbed a line on the dolphin and eased herself into alongside of the jetty.

Q. Do you know the number of the dolphin or what the name of it is?

A. No, I am not supposed to know. I am not a navigating officer. [307]

Q. How long did you remain over there?

A. Oh, I should say an hour. I don't know the exact time, but I imagine about that.

Q. Why did the boat stay over there?

A. They had broken an oil line.

Q. When did you next see the barges?

A. I seen the barges as I came up out of the fire hole, and they were repairing, back in the engine room, had part of the burner in the vice.

Q. Where were the barges when you came up?

A. They were just off the port side and below us, away below, down in the bight of that bend down there.

(Testimony of Raymond P. Peck.)

Q. Now, below you on which side of the river?

A. They were on the west side of the river.

Q. Was there any other boat there in the river at that time?

A. The cruiser come just shortly after that, just a few minutes.

Q. Came up shortly after what?

A. After I went to the gangway door of the Barry K.

Q. You mean shortly after the accident?

A. Well, shortly after we had tied up.

Q. Oh, yes. Now, when, following the accident, did you have, or did you have any opportunity to notice whether there were any lights on the barges?

A. Yes, there were lights on the barges when they were laying down alongside the west shore down there. [308]

Q. Could you see them from where you were?

A. I could see them.

Q. What lights did you see?

A. I think I seen two white lights. I couldn't tell what position they were in on the barges or anything about that.

Q. It was dark except for those lights?

A. Yes.

Q. Do you know how far you were from those lights when you saw them?

A. Not exactly; possibly two or three thousand feet.

(Testimony of Raymond P. Peck.)

Q. Now, did you see these barges when they were up at Terminal No. 4 later on?

A. I did.

Q. And were you on the barges?

A. I was.

Q. What lights did they have on them then?

A. They had all of the lights intact the same as they had before.

Q. What lights were those and where were they located?

A. Let's see. 22 was laying out on the side of 24, and there were two lights on 24 and one light on 22. I don't know just exactly the position they were laying in there at Terminal 4. I don't remember.

Q. What was the nature of those lights?

A. White lights.

Q. And what kind of lanterns?

A. Storm lanterns, they called them. [309]

Mr. Young: Would the clerk please give me the exhibit which is the lantern? Oh, here it is.

Q. Will you examine Libellant's Exhibit 8 and tell us whether that is a lantern of the kind that you saw at that time? A. That is the kind.

Q. Now, were all of the three lights that you saw on the barges the same type of light as this?

A. That is right.

Q. How close were you to those lights at that time? A. I was on the barges.

(Testimony of Raymond P. Peck.)

Q. What would you say as to the condition of the globes in those lights?

A. I would say they were clean.

Q. Had you had anything to do with the placement of those lights on the barges? A. No.

Q. Who had done that? Do you know?

A. Mr. Kelly.

Mr. Young: You may cross examine.

Cross Examination

By Mr. Wood:

Q. When you came out of your room before the Barry K blew her three blasts to show that she had reversed her engines, the Barry K was within 200 feet of the shore?

A. Oh, approximately. I wouldn't say for sure, but—— [310]

Q. I mean that is as near as you can say?

A. Yes.

Q. And headed diagonally toward the east shore?

A. Not diagonally. She was headed over towards the east shore a little bit.

Q. And still going full speed?

A. She was still going full speed.

Q. You say she was not headed diagonally. Unless she was headed straight forward she must have been headed diagonally.

A. Well, yes. In towards the east shore.

Q. And the other ship was then a thousand feet away, about?

(Testimony of Raymond P. Peck.)

A. I would guess that. Maybe more. Maybe less. I didn't pay any attention to how far away she was.

Mr. Wood: That is all.

The Court: Step down.

(Witness excused.)

The Court: I suggest the morning recess.

(Whereupon at 9:45 a recess was taken.)

The Court: The reporter has asked me whether he should plan to be here Saturday. Do you gentlemen know now your wishes as to that?

Mr. Wood: I am willing, entirely, to accommodate ourselves to the Court's wishes and convenience.

Mr. Young: That is satisfactory with me, your Honor. [311]

The Court: We are not accustomed to working in court on Saturday.

Mr. Young: Call Mr. Williams, John Williams.

JOHN WILLIAMS,

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Mr. Williams, where do you live?

(Testimony of John Williams.)

A. 601 North Knott Street.

Q. And how long have you been in Portland?

A. About sixteen years.

Q. What is your occupation?

A. I am a deckhand.

Q. Employed by whom?

A. At the present time, Shaver Transportation Company.

Q. Whom were you employed by prior to your present employment?

A. Western Transportation Company.

Q. And how long were you with Western Transportation?

A. Oh, off and on for about five years.

Q. Were you in the employ of Western Transportation Company and on the Barry K at the time of its collision with the Pennsylvanian?

A. I was.

Q. What was your work on the Barry K?

A. I was the deckhand. [312]

Q. Were you on watch at the time?

A. I was.

Q. When did you go on, do you remember?

A. At 6:15, the evening prior.

Q. And were you on duty at the time that the accident, itself, happened?

A. I was.

Q. As the ship was proceeding up the Willamette River, what, if anything, first called your attention to the fact that there might be another ship there?

(Testimony of John Williams.)

A. Well, I was on the lower deck near the fire hole talking to the fireman on watch, and I heard a starboard passing whistle blowed from the Barry K?

Q. Is that the first whistle that you noticed?

A. That is the first thing that I heard.

Q. And did you know at that time that you were in the Willamette River? A. I did.

Q. Headed upstream? A. Yes.

Q. You mentioned the fire hole. Where is that located?

A. That is in the forward part of the boat on the main deck.

Q. I will hand you Libelant's Exhibit 4 and ask you to state whether you can indicate to the Court where the fire hole is with reference to the boat as you see it in the picture. [313]

A. Yes, I can. There is the man standing at the fire hole.

Q. Hole, or hold? A. I wouldn't know.

Mr. Young: I am not sure, myself.

The Court: Q. You mean the boilers are back there?

A. Yes. Right aft this bulkhead, here.

Mr. Young: Q. In this potograph which you just examined it shows two doors in the forward part of the boat. In this picture the doors are open. Were they open on that particular evening, do you remember?

A. Well, they were partially closed. I don't

(Testimony of John Williams.)

know whether they were entirely closed or not. They might have been opened a crack.

Q. In any event you were aware of a starboard passing whistle given by the Barry K?

A. Yes, I was.

The Court: Q. What was that signal?

A. It consisted of two blasts of the main whistle.

Mr. Young: Q. At that time did you look out?

A. Not at that time, no.

Q. Did you later? A. Yes.

Q. When did you look out?

A. Well, there was a recall or a danger whistle blown.

Q. By whom?

A. By the Barry K very shortly after the starboard passing whistle was blown. [314]

Q. Did you hear any whistle from the other ship?

A. No, I, personally, heard no whistle from the other ship.

Q. Did you at any time hear any whistles from the other ship?

A. Yes, I did, but it was quite some while after.

Q. After you heard the danger whistle given by the Barry K, did you then go out on deck?

A. I then stepped out on the bow.

Q. And what did you see?

A. I saw a ship approaching from upstream.

Q. About how far away was it?

(Testimony of John Williams.)

A. Oh, roughly I would say a thousand feet.

Q. Did you notice her lights?

A. I saw lights but I couldn't say what they were.

Q. Where would you say the Barry K was with reference to the shoreline at that time, or did you notice?

A. Well, exactly from where I was standing at that time I couldn't see the shoreline. I couldn't see the east shoreline. I could see the west shoreline, and, judging from the distance that we were from the west shoreline, I would say that they were somewhere near the east shoreline.

Q. Was one of the barges between you and the east shoreline? A. Yes.

Q. Now, what whistles, if any, did you hear after the Barry K blew the danger whistle?

A. I heard no whistle—I heard no whistle from the approaching ship. [315]

Q. Did you hear any more from the Barry K?

A. Yes. Then there was another starboard passing whistle blown from the Barry K.

Q. And then the answer from the Pennsylvanian that you heard? A. Not any answer.

Q. Any further whistles then from the Barry K?

A. There was a starboard passing whistle then blown from the Barry K.

Q. And then what next did you hear?

A. The next whistle that I heard was three blasts from the main whistle of the approaching ship.

(Testimony of John Williams.)

Q. Is that the first whistle that you had noticed from the approaching ship? A. It was.

Q. And were there any further whistles then from the Barry K after you heard the three blasts?

A. Answered by three blasts from the main whistle of the Barry K.

Q. Do you know about how far apart the boats were at that time, or were you in position to see?

A. I was in position to see they were quite close at that time. The exact number of feet I couldn't say, but they were quite close.

Q. Do you know how fast the Barry K was proceeding upstream at about the time you heard the first whistles which she blew?

A. Oh, I really couldn't say. I imagine it was five or six miles an hour. [316]

Q. Were you able to arrive at any conclusions as to how fast the other boat was proceeding?

A. No.

Q. And where were you when the collision occurred?

A. When the collision occurred, at the very moment that the collision occurred, I believe I was in the aft bunk room of the Barry K calling the crew, but I couldn't say positively that that is where I was.

Q. Who was the watchman on board the boat that night? A. Mr. John Kelly.

Q. And did you see him that evening?

A. Yes.

(Testimony of John Williams.)

Q. Where was he when you noticed him?

A. Well, right at that time, or prior to the accident, he came down on the lower deck to see if I was ready and on watch, ready to pick up a barge, and that was——

Q. Where was that barge to be picked up?

A. At the West Oregon mill.

Q. And then after that did you see him any more before the collision?

A. I couldn't say for sure. I believe that I saw him on the upper deck, forward of the pilot house, but I couldn't say that definitely. I know I heard him up there, but I don't know for sure whether I saw him or not.

Q. You mentioned you were calling some of the crew, yourself.

A. Yes. [317]

Q. How did you happen to do that?

A. Well, I saw that a collision was inevitable and I run aft to call the crew.

Q. You did it on your own responsibility?

A. I took it upon myself. And I believe at that time that there was an alarm whistle being blown from the Barry K, from our deck whistle. That is a small whistle aft on the lower deck to signal to the deckhands, and also it is used as an alarm whistle.

Q. Who operates that alarm whistle?

A. That is operated by the man on watch in the pilot house.

The Court: Q. You mean by the pilot?

(Testimony of John Williams.)

A. Yes, the pilot or Master, whichever is on watch.

Q. You mean whoever is at the wheel?

A. Yes, sir.

Mr. Young: Q. Did you actually see the collision?

A. The actual collision, no, I did not see.

Q. When the collision occurred, were you aware of it from the fact of the violence at all?

A. Yes, I was aware of it.

Q. And after the collision occurred, did you notice the position of the other vessel?

A. Yes, quite soon after. I went,—as I said previously, I went aft to call the crew out, and then after the collision I went out on deck and I could see the steamer that was later identified as the Pennsylvanian on the east side of us. [318]

Q. And was she in motion at the time?

A. She was.

Q. Do you know how fast she was going?

A. It would be very hard to say.

Q. Did you notice any change in the speed of the Barry K before the collision occurred?

A. Oh, yes.

Q. Tell the Court what you noticed.

A. Well, as we were proceeding upstream, I don't know exactly at what in reference to the whistles and such that the Barry K was stopped, but the engines were stopped. Now, I don't know how soon that the vessel, itself, came to a stop and

(Testimony of John Williams.)

lost its headway, but then her engines were thrown astern, and at the time of the collision or very soon before the collision the engines were going full speed astern and the pilot was swinging the stern of the boat upstream as much as he could so that the ship would not hit the boat, itself, but instead would hit the barges.

Q. Is that where the collision in fact occurred, do you know? A. Pardon?

Q. Did the collision in fact occur between the steamer and the barge, one of the barges?

A. Yes, the ship hit Barge No. 22, which was on our nose at the aft gangway door.

Q. Do you know whether the Barry K was in motion or standing still when the collision occurred? [319]

A. I believe that she was going astern.

Q. Going astern? A. I believe so.

Q. Now, had you that evening at any time before the collision observed what lights there were on the barges? A. I had.

Q. What occasion did you have to do that?

A. Well, the barge lines are very often, when they are in mills like at Camas and other docks, the lines on the barges, when they are letting, well, they are very often thrown over the side, they are just let dangle, and it is part of the duties of the deckhand on watch to make sure that these lines are picked up and put on deck of the barge. They are made fast to the barge.

(Testimony of John Williams.)

Q. And did you have occasion to do that on that night?

A. And—I did. I went around the barges and I picked up the lines.

Q. What time in the evening was it that you did that?

A. It was after we left Camas, somewhere between Camas and Portland—Camas and Vancouver.

Q. Is that the only occasion you had to do that shortly before the accident occurred?

A. As I remember, that is the only occasion I had to go on the barges.

Q. What lights did you see on the barges at that time?

A. I saw one white light on the forward starboard corner of Barge No. 22, one white light on the port forward corner of Barge No. 24, and one white light on the after port corner of Barge No. 24. [320]

Q. What color were those lights?

A. White lights.

Q. How high were they above the decks of the barges?

A. Oh, roughly I would say six feet.

Q. And how strong was the light which they cast? Would you describe that?

A. Quite strong.

Q. Were you that evening in any position where you could observe those lights from a distance?

(Testimony of John Williams.)

A. No, I was not.

Q. Now, after the accident happened, did you see the barges?

A. Yes, I saw the barges after the accident happened several times.

Q. Where were they after the accident?

A. The first time I saw them after the accident was immediately after the accident. Barge No. 22 was being pushed downstream on the nose of the steamer Pennsylvanian, and Barge No. 24 was adrift—exactly in what position in relation to the other barge I couldn't say, but I believe it was a bit further downstream, and I could see them float on downstream at a few different times, working around the boat. Later I saw them brought upstream by the tug Cruiser, and later saw the same barges at Terminal 4, where they were tied up by the tug Cruiser.

Q. Did you notice where those barges came to rest after they were broken away from the Barry K?

A. No, I did not. [321]

Q. At Terminal No. 4 did you notice the lights on the barges?

A. I did.

Q. What lights did you see then?

A. I saw the same three lights and in the same three positions.

Q. Where were those lights with reference to the exact corners of the deckhouses on those barges?

A. As near to the exact corner as possible.

(Testimony of John Williams.)

Q. Do you know whether those lights were visible either to a person standing to the side of them on the forward end or on the side of the barge, itself, looking forward? A. They were.

Mr. Young: You may cross examine.

Cross Examination

By Mr. Wood:

Q. Mr. Williams, this West Oregon mill, where you were going to pick up the third barge, is at Linnton, isn't it? A. Yes, it is.

Q. About how far upstream was that from you, from the place of the collision?

A. Oh, I couldn't say exactly. It is less than a mile, in the vicinity of a mile.

Q. Did you have anything to do with the care of these lights on the barges?

A. It wasn't my duty.

Q. There was no occasion for you to notice them at all, was there? [322]

A. Well, the only occasion that I would have to notice them is any time that a man goes around and inspects the barges, picking up lines and such, he usually makes a practice of noticing all things that—to see that they are in order, the doors of the barges closed and if the lights are right.

Q. What did you mean by saying that these lights were fixed as near the corner of the barge as possible? To illustrate, if that is the corner of the house of one of the barges, was there any bracket out there on which the light hung?

(Testimony of John Williams.)

A. No, there was no bracket, but very, very close to the corner, without being right on the corner, right aft of the forward corner, there, there is nails.

Q. How far aft?

The Court: Q. Which way is the barge pointing?

A. This would be the upstream end of the barge. Right as close to the corner as it could be.

Q. This would be the starboard forward corner of the barge? A. Yes, right here.

Mr. Wood: Q. How far back from the corner would the nail be driven?

A. Right at the corner. If this was the corner, here, it would be over six inches.

Q. Six inches back of the corner?

A. Or maybe not even that far. Close enough that they could be seen with a pretty good angle forward. [323]

Q. But if the nail was driven six inches back from the corner, from the starboard side, and the lantern was hung something like that, the only place it would show would be forward and on the starboard side, wouldn't it?

A. From a distance of a couple of hundred feet that would show practically to the middle of the barge, and at a further distance you could see it quite a great distance to the other side of the barge.

Q. Well, it is hanging about approximately the way you think it was, wasn't it?

(Testimony of John Williams.)

A. No, it is hanging further back than I think it was, hanging about like that, as close to the corner as it could be.

Q. Was it any part of your duties to notice whether the lanterns were clear or not?

A. Oh, I really wouldn't say that it was part of my duties, but, as I stated before, we always watch for things like that.

Q. Will you say that the globes were as clean as this lantern exhibited in court is? Will you testify to that?

A. I couldn't say it was as clean as that, but it was clean.

Q. Would you say they were hanging six feet above the deck of the barges?

A. Approximately just about where a man would hang them out.

Q. How far would that be above the water?

A. Oh, I really couldn't say. I don't know how far it is, exactly, from the water's edge to the deck of the barge.

Mr. Wood: That is all. [324]

Redirect Examination

By Mr. Young:

Q. Just a moment, Mr. Williams. Will you take the lantern and hold it on the edge of this upright, and place that lantern, now, just about where you think it was at the time that you saw the lanterns on the barges?

A. Just about like that.

(Testimony of John Williams.)

Q. Now, from where your finger is, will you take this rule and measure the place where your finger is to the end of this upright?

A. Four inches.

The Court: Q. What finger did you measure from?

A. The center finger.

Q. In other words, then, the bight of the lantern was against a nail which was approximately four inches from the forward end of the barge corner. Is that right?

A. Just about that, I imagine.

Mr. Young: That is all.

(Witness excused.) [325]

JOSEPH M. SCHAUBLE,

produced as a witness in behalf of the Libellant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. State your name to the Court, please.

A. Joseph M. Schauble.

Q. And in whose employ are you?

A. Western Transportation.

Mr. Wood: A little louder, please, Mr. Schauble.

A. Western Transportation.

(Testimony of Joseph M. Schauble.)

Mr. Young: Q. What is the nature of your work?

A. Marine engineer.

Q. How long have you been a marine engineer?

A. Since 1919.

Q. What license do you hold?

A. Non-condensing river license, 750 gross tons.

Q. Were you on board the Barry K the night of its accident with the Pennsylvanian?

A. I was.

Q. And what were your duties at that time?

A. Assistant engineer, first assistant.

Q. Were you on watch at the time the accident happened? A. I was.

Q. Do you remember about when you went on watch?

A. Well, it would be just a little after midnight. [326]

A. And then you would remain on watch until how long? A. 6:15.

Q. Where were you when you were on watch, what part of the Barry K?

A. In the engine room.

Q. And where is the engine room located?

A. On the after end of the boat.

Q. On the lower deck?

A. On the lower deck.

Q. From your position there, is it possible for you to hear whistles of the Barry K or other whistles? A. Yes, you can.

(Testimony of Joseph M. Schauble.)

Q. Do you recall the Barry K starting up the Willamette River that particular night?

A. Well, I don't just recall the start up the Willamette, of course.

Q. Well, did you notice any whistles from the Barry K after the boat was in the Willamette River at any time?

A. Oh, yes. I heard——

Q. What whistles did you hear?

A. Well, I recall not all of the whistles, but the danger signal.

Q. You recall the danger signal?

A. Yes, sir.

Q. Do you remember how many danger signals you heard?

A. No, not exactly.

Q. Did you hear more than one?

A. Yes, I am positive I did. [327]

Q. Did you hear any signals from the Barry K other than danger signals?

A. Well, I heard other signals, but I don't know just what they were.

Q. I see. Now, is there any means of communication between the pilot house and your place in the engine room?

A. We have a speaking tube, yes.

Q. And is there a gong or a bell, also?

A. Yes, sir.

Q. Did you receive any signals from the pilot house at any time after you heard this danger signal, the danger whistle?

A. Well, I heard—got a stop bell and full speed astern.

(Testimony of Joseph M. Schauble.)

Q. You got a stop bell and did you respond to that stop bell immediately?

A. Absolutely, yes.

Q. At the time that you received the stop bell, do you know about what the forward speed of the Barry K was?

A. No, I wouldn't know.

Q. In any event you answered the stop bell immediately? A. Yes, sir.

Q. And what did you do at that time with regard to the engines?

A. Well, just stopped the engines and immediately following I got a back-up bell full speed astern.

Q. The back-up bell came immediately later, afterwards. Is that right?

A. Yes, that is right. [328]

Q. And then did you respond to that bell promptly? A. Yes, sir.

Q. Were you aware of the happening of the collision, itself? A. No, sir.

Q. You didn't feel the collision at all?

A. Oh, yes; sure.

Q. That is what I mean.

A. Yes, you bet.

Q. You did not see the collision, did you?

A. No, you couldn't see the collision.

Q. When did you stop the engines with reference to the time of the collision? Could you estimate that time?

(Testimony of Joseph M. Schauble.)

A. Well, it wasn't very long. I wouldn't think it would be over a couple of minutes if it was that long.

Q. Do you know whether or not the Barry K had completely lost way by the time that the collision occurred?

A. Oh, no. I couldn't say that.

Q. You couldn't say as to that? A. No.

Q. Did you at any time hear any whistles from the other steamer? A. No, I never.

Q. They may have been blown and you not heard them? A. Oh, it could have been, yes.

Q. Could there have been whistles on the Barry K that you did not hear? [329]

A. Yes. Sure there could have.

Q. Did you see the other boat at any time before the collision occurred? A. Before? No.

Q. After the collision occurred did you see the other vessel?

A. I just got a shadow of it through the gangway door; that is, I could see it was an ocean boat, was all I could see.

Q. Was the other boat in motion when you saw it? A. Well, I couldn't tell.

Q. Did you see the other boat at any time after that? A. No.

Q. Your duties require you to remain there in the engine room. Is that right? A. That is it.

Mr. Young: You may cross examine.

(Testimony of Joseph M. Schauble.)

Cross Examination

By Mr. Wood:

Q. Mr. Schauble, were you alone in the engine room, or did you have anybody assisting you?

A. No, I was by myself.

Q. Did you have to handle both the port and the starboard engine by yourself?

A. They both handle from the same throttle.

Q. Have you a bell book showing the bells that you received?

A. We don't keep records of bells. We don't keep records of the [330] bells as they are rang.

Q. Is it not a practice on the Barry K to keep an engine room bell book?

A. Not as long as I have been on the boat.

Q. You keep no record of the bells at all?

A. No.

Q. Is it not customary on river boats to keep a bell book?

A. I have never heard of it.

Q. You said you did not know the forward speed of the Barry K. Perhaps you interpreted the question to mean the forward speed through the water, but you know she was running with her engines full speed ahead, do you not, up to the time she got the stop bell?

A. Yes, sir.

Q. You said you got a stop bell, then a backing bell, the backing bell following on the stop. That is rather usual, is it not, on all ships to give a stop bell before they give the reversing bell?

A. Yes.

(Testimony of Joseph M. Schauble.)

Q. In other words, it is not customary on any ships to reverse full speed astern from full speed ahead without an intermediate stop, is it?

A. No, that there, they are made, they stop and then——

Q. Do you know what the horsepower of the engines of the Barry K are?

A. Not exactly, no.

Q. Well, have you been engineer on other river boats in the Columbia and Willamette rivers? [331]

A. Oh, yes.

Q. You are familiar with that type of boat, are you? A. Yes.

Q. And the Barry K is a powerful boat of that class, is she not?

A. Well, yes. She is a good boat.

Mr. Wood: That is all.

Mr. Young: Just a moment, please.

Mr. Wood: Mr. Young, in respect to this thing of the bell book, which he says he doesn't have, have you a copy of a log book, not a copy, but have you the original log?

Mr. Young: I have the original log both of the engine room and the pilot house.

Mr. Wood: Well, at some convenient time——

Mr. Young: I have them right here.

Redirect Examination

By Mr. Young:

Q. Mr. Schauble, will you examine this book which I am handing you and tell me whether you know what that book is?

(Testimony of Joseph M. Schauble.)

A. It is the log book.

Q. What is it?

A. That is the log book of the engine room.

Q. Log book of the engine room? A. Yes.

Q. Is that for February 1, 1941?

A. Yes. [332]

Q. Whose handwriting are those items in?

A. Where the collision occurred it is mine.

Q. That part is yours? A. Yes, sir.

Mr. Young: We offer this in evidence, your Honor. I should like, however, if it is introduced in evidence, to have the opportunity of substituting a copy.

The Court: Q. What day of the week did this accident occur? A. Saturday, February 1.

Q. Early Saturday morning?

A. 12:55 Saturday morning.

Mr. Wood: It is my understanding, your Honor, that log books are not competent testimony or evidence on behalf of the ship that offers them. They may be used against the ship or they may be used by a witness who kept the log to refresh his memory, but the log book, itself, is not evidence. I do not know that I am going to insist on the objection yet,—I do not think I am—but I wish to make my position clear.

The Court: Why?

Mr. Wood: Because I do not know that I am going to make the objection or not.

The Court: I will not rule until you make up your mind what you want to do.

(Testimony of Joseph M. Schauble.)

Mr. Wood: Very well, your Honor.

Mr. Young: If the Court please, I am not insisting that the [333] book go in evidence. I produced it because some question arose with reference to the log. The only point I want clear is that I am willing that the book go in evidence, and the fact that it is not in evidence is no circumstance to be held against our position.

The Court: I understand you are withdrawing the offer?

Mr. Young: Yes, your Honor.

Mr. Wood: I want to ask him something about it.

Mr. Young: All right.

Mr. Wood: Mr. Schauble, in the left-hand column of your book, there, at the top, there are the letters "AR." Does that mean "Arrived"?

A. Arrived.

Mr. Wood: At that time? A. Yes.

Mr. Wood: And what is on the second column?

A. That is departure, or "Left," it says here.

Mr. Wood: So according to this log you noted the collision at 12:55 A. M., and then you departed from some place at 2:15?

A. Yes. Well, we shoved right across the river from there.

Mr. Wood: Is that what you mean, that you remained tied up over there at the other side of the river until 2:15? A. Yes, sir.

Mr. Wood: Did you go back to the mouth of the river? A. Yes, we went back to telephone.

(Testimony of Joseph M. Schauble.)

Mr. Wood: Back to the mouth of the Willamette? [334] A. Yes.

Mr. Wood: And where did you telephone from there, some house?

A. Oh, they have a station there that they operate.

Mr. Wood: Now, this entry, here, "Post Office Bar, hit SS. Pennsylvanian 12:55 A. M." has been erased and rewritten, has it not?

A. Yes. I got Pennsylvanian spelt wrong the first time. That there is how I happened to do that.

Mr. Wood: Is that the only reason you made the erasure? A. Yes, sir.

Mr. Wood: That is all.

Mr. Young: It wouldn't be the first time that the word "Pennsylvanian" has been misspelled I should say.

That is all. Witness excused.

(Witness excused.)

Mr. Young: At this time, if the Court please, I wish to inform opposing counsel that I have here the original log book of the Master. If counsel wishes to examine it he is at liberty to do so.

Mr. Wood: I will at a later time; not right this minute.

Mr. Young: The only point is, if you have any questions you want to ask about it I should like to have them asked while Captain Williams is still here. [335]

Mr. Wood: Well, after all, Captain Reed is a more important man, is he not?

Mr. Young: Well, Captain Reed will be here, but this is in Captain Williams' handwriting, I believe.

Mr. Wood: Then I should like to look at it. Is he not going to be here after today?

Mr. Young: I was hoping to excuse him today. He is not in the employ of the Western Transportation Company and wants to get back to his work.

I want to correct a statement I made, your Honor. This is in Captain Reed's handwriting.

Mr. Wood: Well, then I will ask Captain Reed anything about it that may be necessary.

Mr. Young: Call Mr. Leach.

The Court: Write this down, Mr. Maxwell, while the witness is coming up here: 1932 A. M. C. page 1247. That is what Mr. Wood cited me in the good ship Chandler case as authority for admission of the Inspectors' report.

TOM LEACH,

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Do you live in Portland?

A. Yes, sir. [336]

(Testimony of Tom Leach.)

Q. And what is your occupation?

A. Deck hand.

Q. In whose employ are you at present?

A. Oh, Oregon Steel Company, shipyard.

Q. Oregon Steel? A. Yes, sir.

Q. Prior to the time that you first went with the Oregon Steel, were you with the Western Transportation Company? A. I was.

Q. In what capacity? A. Deck hand.

Q. And how long did you hold that job?

A. About 1934.

Q. Up to when? A. Last Monday.

Q. Last Monday? A. Yes, sir.

Q. Were you a deck hand on board the Barry K at the time of the collision with the Pennsylvanian? A. I was.

Q. Were you on watch at that time?

A. No, sir.

Q. When did you go off watch?

A. Six o'clock in the evening.

Q. And do you remember when you went to bed? [337] A. No, I can't say.

Q. In any event were you in bed when the Barry K came up the Willamette River prior to the time of the accident?

A. You mean was I in a bed?

Q. Yes. Were you in bed then?

A. Yes, sir; I was.

Q. Whereabouts were you sleeping on the boat?

A. I was sleeping aft in the bunk room.

(Testimony of Tom Leach.)

Q. How far aft?

A. Extreme aft of the bunk room.

Q. What called your attention to there being another ship in the river before the collision?

A. I didn't hear nothing until the night watchman woke me up.

Q. Who was the night watchman?

A. John Kelly.

Q. And when he woke you up, did you hear any whistles of any sort?

A. No, sir; I didn't.

Q. Did you later?

A. No, sir; I didn't.

Q. What did you do?

A. I got up and put my clothes on.

Q. And did you go out on deck?

A. No, sir. When we hit it knocked me down.

Q. Then what did you do?

A. Then I went out on deck. [338]

Q. And when you went out on deck, did you see the other vessel?

A. No, sir; I did not.

Q. Did you see the barges that had been with the Barry K?

A. I seen the barges floating downstream.

Q. Where were they?

A. As well as I can remember, I was about half asleep, and I think it was on the port side, on the —on the starboard side, I should say.

Q. And was the Barry K in motion when you went out on deck?

A. I couldn't say.

Q. You were a little sleepy at that time, I take it.

A. That is right; I was.

(Testimony of Tom Leach.)

Q. At any time when the barges were floating away, did you notice whether there were any lights on them? A. Yes, sir; there were lights.

Q. What lights did you observe?

A. White lights.

Q. And do you know where they were located?

A. Well, I know where they should have been. I couldn't say at that time whether they were on that barge or not.

Q. How many lights do you remember seeing?

A. Two lights.

Q. Two lights? A. Yes, sir.

Q. And did you see those barges close up at any time later that [339] evening or later in that morning, rather?

A. I seen them tied up at Terminal 4.

Q. Did you notice the lights at that time?

A. The lights were still burning.

Q. And how many lights did you notice then?

A. Three lights. I think three lights. Yes.

Q. Now, were those lights lights of the kind that we have a sample of here in the court room?

A. Yes, sir.

Q. And do you know about where they were located on the barges? A. Yes, sir.

Q. Where? A. Right on the corner.

Q. On which corner?

A. Well, on the port side.

Q. Of which barge? A. 24. Forward.

Q. Port side forward in the corner of 24?

(Testimony of Tom Leach.)

A. Yes, sir.

Q. And was there any other light on that same barge? A. Yes, sir; aft of 24.

Q. And where was it aft?

A. On the port side.

Q. At the corner? A. Yes, sir. [340]

Q. Was there any light on Barge 22?

A. Barge 22? I think on the starboard side of the forward barge on the corner.

Q. And that was where with reference to the corner? A. Yes, sir.

Q. Where with reference to the corner?

A. On the starboard side.

Q. I mean, was it right at the corner, or was it on the side, or on the bow?

A. She was right on the front of the barge.

Q. Right on the front of the barge?

A. Yes, sir.

Q. Could you illustrate that by taking this lantern and a pencil to indicate about the position of those lights? We will just imagine that the pencil—pardon me just a moment. What were they fastened to? A. A nail.

Q. A nail. Just imagine, now, that this pencil is the nail and take this lantern, and then come to the end of this upright and place the nail in about the position that you would regard the light to have been. A. Well, sir,—

Q. We will say we are now pointing to the starboard side of Barge 22, and around this corner would be the forward part of Barge 22. [341]

(Testimony of Tom Leach.)

A. Is the starboard part? I would say about here. The nail was drove in and up, and this is fixed, would hang something like this.

Q. Did any part of the light, itself, extend out around the forward part of the corner?

A. That is something I couldn't say.

Q. You couldn't say about that? A. No.

Mr. Young: You may cross examine.

Mr. Wood: No cross examination.

(Witness excused.)

Mr. Young: Mr. Melvin Young.

MELVIN YOUNG

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. You are Mr. Melvin F. Young?

A. Yes, sir.

Q. And by whom are you employed?

A. Western Transportation.

Q. In what capacity? A. Chief engineer.

Q. What license do you carry?

A. Chief engineer. [342]

Q. And how long have you held such a license?

A. About twenty-five years.

Q. Does that entitle you to act as chief engineer on river boats in the Willamette and Columbia rivers? A. Yes, sir.

Q. Were you the chief engineer on board the

(Testimony of Melvin Young.)

Western Transportation Company's boat Barry K at the time of its collision with the Pennsylvanian?

A. Yes, sir.

Q. Were you on board the boat at the time of the accident? A. Yes, sir.

Q. Were you on watch then? A. No, sir.

Q. Who was on watch? A. Mr. Schauble.

Q. When did you go off watch?

A. I went off about a quarter after twelve.

Q. And did you go to bed? A. Yes, sir.

Q. Were you in bed when the collision occurred?

A. Yes, sir.

Q. What first called your attention to anything happening on the Willamette River?

A. Well, they run a stopping bell and a back-up bell and three whistles that he was going astern full speed. [343]

Q. Where was your room on the Barry K?

A. About the fourth room down on the port side.

Q. That is on the second deck?

A. Yes, sir.

Q. It was the four blasts of the whistle of the Barry K that woke you? A. No, three.

Q. Three blasts? A. Yes.

Q. Did you hear any danger signal by the Barry K?

A. I heard one distinctly. That is all. I wouldn't say if others were blown.

Q. When was this danger signal that you heard distinctly blown with reference to the three whistles that you heard?

(Testimony of Melvin Young.)

A. Just a little before the three.

Q. The first signal you heard, then, was the danger signal. Is that right? A. Yes, sir.

Q. Then the next one was the three whistles?

A. Three.

Q. Did you hear any answering whistles at all from any other boat? A. None at all.

Q. May there have been some that you did not hear? A. I couldn't say.

Q. Did you go out on deck after you heard the danger signals? [344]

A. Yes. I went out on deck when I heard the stopping bell and she was backing up.

Q. Did you see Mr. Kelly at any time just before the collision?

A. Kelly just went by the door and says, "Get out. We have collided with a steamship."

Q. And what was Mr. Kelly doing at that time?

A. He was going forward.

Q. Was the Barry K in motion at the time the collision occurred, do you know?

A. She was practically stopped.

Q. And did you see the collision?

A. No, sir.

Q. Did you feel it? A. Yes, sir.

Q. Did you see the other vessel at any time before the collision? A. No, I didn't.

Q. When did you first see it, if at all?

A. What is that?

Q. When did you first see the other vessel, if at all? A. I never seen her at all.

(Testimony of Melvin Young.)

Q. You did not see her even after the accident?

A. I went back and changed my clothes, and by the time I came up she had gone.

Q. Did you then go down below?

A. Went down below. [345]

Q. What did you do after that?

A. Worked on the oil pipe to the burner and fixed it.

Q. How long did that take?

A. About an hour.

Q. Where did the Barry K go following the collision?

A. She went across on the west side.

Q. Did you notice the barges at all in connection with the Barry K? A. No, I didn't.

Mr. Young: That is all.

Cross Examination

By Mr. Wood:

Q. What is the power of the Barry K?

A. Between 550 and 600.

Q. Is that a well-powered tugboat?

A. Yes, it is pretty good for a boat that size.

Q. She used to run on the Lewiston run, did she not?

A. Yes, she was up there for quite a while.

Q. It requires rather an extra well-powered boat to run on the Lewiston run, does it not, short bends and swift rapids?

A. She has got pretty good power.

Mr. Wood: That is all.

(Testimony of Melvin Young.)

Redirect Examination

By Mr. Young:

Q. Just one further question. Was there a Mr. Christy who was with you in the engine room at any time? Do you know such a person? [346]

A. No.

Q. There was no one on the boat by that name?

A. Not that I remember.

Mr. Young: That is all.

(Witness excused.)

Mr. Young: Mr. Fowler.

The Court: How many more witnesses do you have?

Mr. Young: I have one short one and this witness. I am sorry. I should like to call Mr. Imlay in place of this witness, who will be very short.

The Court: You are not going to put Kelly on?

Mr. Young: I have three witnesses. I am sorry.

GILBERT IMLAY

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. Mr. Imlay, do you live in Portland?

(Testimony of Gilbert Imlay.)

A. Yes.

Q. What is your occupation?

A. Deck hand.

Q. Employed by Western Transportation Company?
A. Not at present. I was.

Q. By whom are you now employed? [347]

A. Shaver Transportation.

Q. Well, were you with the Western Transportation Company at the time of the Barry K accident?
A. Yes.

Q. And were you on board the Barry K when the collision occurred with the Pennsylvanian?

A. Yes.

Q. Were you on duty at that time?

A. No; I wasn't.

Q. When did you go off, do you remember?

A. I hadn't been on duty at all. I had just come on the job the previous evening, and I wouldn't have gone on watch until they reached the harbor.

Q. Well, were you in bed at the time just before the collision occurred?
A. Yes.

Q. Where was your room?

A. I was back in the aft bunk room.

Q. The aft bunk room?
A. Yes.

Q. Now, what was the first information you had of anything occurring on the river, there?

A. When John Williams come in and turned the lights on in the bunk room.

Q. That was the John Williams who has been on the stand here? [348]
A. Yes.

(Testimony of Gilbert Imlay.)

Q. And did he give you any information at that time?

A. He come in and says, "Look out. She's going to hit."

Q. What did you do?

A. About that time it hit, and I lit out on the deck.

Q. Had you noticed any whistles that night?

A. No, I hadn't.

Q. I mean whistles either of the Barry K or of any other boat? A. No.

Q. Now, did you get out of bed then?

A. Well, I was practically out then.

Q. Where did you go?

A. I went down on the bow, down in the forward hold.

Q. When you went out on the bow, did you observe the other ship then?

A. I saw it, but I just noticed it. I didn't pay any attention to it.

Q. You did not pay any attention to its precise location, you mean?

A. No, that is just out forward of the boat.

Q. Did you notice the position of the Barry K at that time?

A. Well, it was out in the river. I couldn't say where.

Q. It was what?

A. We were away from our tow—I noticed that—the barges.

(Testimony of Gilbert Imlay.)

Q. How was she headed with reference to, say, the east bank?

A. She was headed toward the east bank. [349]

Q. She what?

A. She was headed towards the east bank at an angle.

Q. Did you notice the direction in which the Pennsylvanian was headed? A. No, I didn't.

Q. Did you notice the barges of the Barry K after the accident?

A. Not until after we were across the river and tied up.

Q. Where were the barges when you noticed them?

A. They were—they were over by the east shore. They were drifting downstream.

Q. Where did they finally come to rest?

A. Well, I noticed that they were drifting downstream and I was down there—I went down in the forward hold with the mate to see how badly the boat was damaged, and when I come back up why the Cruiser had picked them up.

Q. Did you notice any lights on the barges?

A. I noticed two lights.

Q. Two lights? A. Yes.

Q. How far away were the barges when you noticed the two lights?

A. Well, they were across the river from us.

Q. Across the river from you? A. Yes.

Q. What color were those lights?

(Testimony of Gilbert Imlay.)

A. White. [350]

Q. Do you know where they were located on the barges?

A. Know where they should be. I couldn't say definitely where they were, because I hadn't been out on the tow.

Mr. Young: I see. That is all.

Mr. Wood: That is all.

(Witness excused.)

Mr. Wood: In view of the counsel's intimation that Mr. Williams may not be here tomorrow, could I have him recalled to ask him just one question about his testimony before the Inspectors?

Mr. Young: You mean Captain Williams, do you not?

Mr. Wood: Captain Williams. Yes.

E. P. WILLIAMS

a witness in behalf of the Libelant, was thereupon recalled for further cross examination, and, having been previously sworn, further testified as follows:

Further Cross Examination

By Mr. Wood:

Q. Captain Williams, in testifying before the Inspectors, I want to ask you whether you testified

(Testimony of E. P. Williams.)

as follows in answer to questions by Captain Joachims:—

The Court: What page?

Mr. Wood: Page 28. This was on the investigation, not the trial. [351]

Q. The question:

“Q. Do we understand that you keep to the left side of the channel on account of convenience?

“A. Convenience and safety.

“Q. Was the left side of the channel dangerous? A. No, sir.”

Did you so testify? A. Yes, sir.

Mr. Wood: That is all.

Mr. Young: Do you want to ask any questions, Mr. Wood, about the log?

Mr. Wood: Well, he didn't keep it.

Redirect Examination

By Mr. Young:

Q. Will you examine this document, Captain Williams, and state what that is, if you know?

A. It is re-copied, isn't it?

Q. What?

A. It is recopied off the regular log? That is my handwriting, yes.

Q. That is your handwriting?

A. Yes.

Q. Is that the original log?

A. That is my handwriting. That is the one I made up.

(Testimony of E. P. Williams.)

Q. That is what I want to inquire about. Were you the one that made up that log, then?

A. Yes, sir. [352]

Q. And did you write it the night of the accident?

A. Well, our time—we put our time down and place as we go along.

Q. There was some question here as to whether you or Captain Reed had actually written up that log, and I wanted to clarify that at this time.

A. Yes, I wrote that log.

Q. You wrote that log? A. Yes, sir.

Q. Is any of that based upon information given you by Captain Reed?

A. No, I believe not, only as to the time of the collision. I was up at that time and the balance of the time that we arrived at Portland.

Mr. Young: This log is available, your Honor, for counsel's use, if he wishes.

Mr. Wood: I do not care to ask Captain Williams anything about it.

Mr. Young: Very well.

That is all, Captain.

(Witness excused.)

Mr. Young: Now, Mr. Fowler. [353]

LOUIS L. FOWLER,

produced as a witness in behalf of the Libellant,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. State your name, please.

A. Louis Fowler.

Q. And you live in Portland? A. I do.

Q. How long have you lived here?

A. Since 1933.

Q. By whom are you employed?

A. Shaver Transportation Company.

Q. How long have you been with that company?

A. Since 1933.

Q. Since 1933? A. 1933.

Q. Were you ever in the employ of the Western Transportation Company? A. I was.

Q. At what time?

A. I believe it was in 1930 or '31, somewhere in there,—I am not sure—I worked a couple of months for them.

Q. Just for a couple of months. Outside of that, have you worked for the Western Transportation at all? A. None whatsoever.

Q. And is your present work with the Shaver Transportation Company [354] permanent so far as you know?

(Testimony of Louis L. Fowler.)

A. As far as I know. I hope.

Q. Do you carry a Federal license?

A. Yes.

Q. What is the nature of the license?

A. I have an operator's license and a mate's license of inland rivers.

Q. And what kinds of boats? What sort of boats driven by what kind of power?

A. Oh, it would class as motor boats.

Q. Diesel engine boats?

A. An operator's license would, yes.

Q. And how long did you say you have held that license? A. Four years.

Mr. Wood: A little louder, please.

A. Four years.

Mr. Young: Q. Were you in the Willamette River at the time that the collision occurred between the Barry K and the Pennsylvanian on February 1 of this year? A. I was.

Q. How did you happen to be there at the time?

A. I was on my way to the dock.

Q. Your way to the dock?

A. I was on my way to the Shaver Transportation Company dock.

Q. You were coming upstream? [355]

A. Coming upstream.

Q. What boat were you on?

A. The tug Cruiser.

Q. Were you piloting the tug Cruiser at that time? A. I was.

(Testimony of Louis L. Fowler.)

Q. Is the tug Cruiser a boat owned by the Shaver Transportation Company? A. It is.

Q. Is it proper to call you "Captain," by the way? A. I don't care.

Q. You do not mind. Well, Captain Fowler, were you familiar with the Barry K owned by the Western Transportation Company? That is, did you know it when you saw it? A. Sure.

Q. Did you see the Barry K at any time earlier that night before the collision occurred?

A. Yes.

Q. Where did you see her?

A. We met each other just about abreast of the Columbia River Paper Mill dock, or it is the port dock of Vancouver Terminal 1.

Q. Now, at the time that you met her, you were then on the tug Cruiser, were you?

A. I was.

Q. And in which direction were you proceeding? A. I was going upstream. [356]

Q. And where was the tug Cruiser when you first saw the Barry K?

A. Between the Interstate Bridge and the Railroad Bridge at Vancouver.

Q. And where was the Barry K?

A. She was above the Interstate Bridge at Vancouver.

Q. What direction was the Barry K travelling?

A. Downstream.

Q. And you were going upstream?

(Testimony of Louis L. Fowler.)

A. I was.

Q. Where were you intending to go at that time?

A. Columbia River Paper Mills at Vancouver.

Q. And where are they located?

A. Just—well, between the bridges, there. They tie the rafts at the lower end of the port dock, right to the dock on the end.

Q. Did you have a raft with you at the time?

A. I did.

Q. What called your attention to the Barry K at that particular time?

A. She whistled two long whistles and a short whistle for the Interstate Bridge at Vancouver.

Q. Do you know about what time of night this was?

A. At the time she whistled, or the time——

Q. The time she whistled was about when?

A. Oh, it was midnight or shortly after.

Q. That would be midnight—that is on the 31st of January, or the 1st of February? [357]

A. That is right.

Q. 1941? A. That is right.

Q. Now, at the time that you saw the Barry K, how far was the tug Cruiser from the Barry K?

A. Oh, I would safely say a mile or better.

Q. How far apart, approximately, is the Railroad Bridge at Vancouver from the Interstate Bridge?

A. Well, I wouldn't say. It is possibly a mile.

(Testimony of Louis L. Fowler.)

Q. Were those the only lights you could see?

A. At that time, yes.

Q. At that time. Now, were you able to identify the Barry K from that distance?

A. Well, if I would just come in sight of her I don't suppose I would have recognized her as the Barry K, but I knew it was, because I knew what she had and where she was going.

Q. Did you know the sound of her whistle?

A. Very much so, yes.

Q. About how far would you say you were from the Barry K when you heard her whistle?

A. Well, I was just coming around the corner of the mouth of the Willamette dike and I would say it was over a mile.

Q. It was over a mile. Now, could you tell where the Barry K was with reference, let us say, to the east side of the river?

A. It was closer to the east side than it was the west side.

Q. And could you tell what the course was of the approaching ship [360] coming downstream?

A. From where I first noticed the ship I would say that she was about exactly on the range as she could get.

Q. You mean by "on the range," Post Office Range?

A. I would say she was right where she should be, right on the range.

Q. After noticing the mast lights of this ap-

(Testimony of Louis L. Fowler.)

proaching ship, did you at a later time see any other lights on that ship?

A. Yes, I saw her green running light come into view.

Q. Now, did you hear any further whistles from the Barry K after you noticed these two whistles?

A. None whatsoever.

Q. Did you hear any whistles from the Pennsylvanian? A. None whatsoever.

Q. Is it possible they may have blown whistles and you not have heard them?

A. Oh, certainly.

Q. Were you concerned in the operation of either of those boats? A. Not at all.

Q. Now, at the distance that you were from the Barry K, could you tell anything about what her speed was?

A. No, I couldn't.

Q. Or the other steamer either?

A. I could not.

Q. At what point of time, if at all, were you able to identify the ship that was coming downstream with regard to what kind of a ship she was? [361]

A. After I came back to pick up Barge No. 24.

Q. That is after the accident, you mean?

A. After the accident.

Q. Now, did you see the collision, itself?

A. Yes.

Q. Just describe to the Court now what you saw.

(Testimony of Louis L. Fowler.)

A. Well, the Pennsylvanian was coming down, like I say. As near as I could tell from where I was at she was on the ship range. All of a sudden she just turned and went right across the river and smashed into the Barry K. That is as near as I can tell what happened.

Q. Could you tell whether the Barry K, itself, or one of its barges was smashed by the Pennsylvanian?

A. No, I couldn't tell, only that the Barry K backed away and run across the river.

Q. Prior to the time that this collision occurred, did you observe any lights on the Barry K?

A. I seen two mast lights going up the river.

Q. And did you see any other lights on the Pennsylvanian after she had turned off Post Office Range and headed to the east side?

A. She turned enough so that the green light went out of sight and the red light came into view and I could see her mast lights from a side view and her red light and that is all.

Q. Did her red light remain continuously in view then until the collision? [362]

A. Yes.

Q. What became of the Barry K and the Pennsylvanian after the collision?

A. The Barry K went over across to what they call Silo Dolphin and tied up to repair whatever damage they had, and I went up to the Barry K and asked them if I could be of any assistance. Captain Williams asked me to pick up his barges

(Testimony of Louis L. Fowler.)

and tie them up. So I went back to get them and I picked up Barge No. 24, put on my own port side. The ship then proceeded on down the river——

Q. Pardon me. Where was Barge No. 24 when you picked it up?

A. Drifting around in approximately the middle of the river or a little closer to the west shore.

Q. And what next did you do?

A. Then I turned it around and picked up Barge No. 22. Barge No. 22 was laying right flat against the dike.

Q. Now, the dike on what side of the river?

A. On the west side of the river.

Q. And about where, with reference to this so-called Silo Dolphin that we have heard about? Or do you know where the Silo Dolphin is?

A. Yes, I know where that is at. It was quite a little below that.

Q. It was below that? A. Yes.

Q. But it was on the west side of the river?

A. West side of the river, yes.

Q. Now, at the time that you picked up Barge 24, did you notice [363] what lights she had on her?

A. Had two lights, one on either end on one side.

Q. Which side was that, do you know?

A. Well, when I picked them up why I took it on one side, so the lights would be on my own left side, port side.

Q. And when you picked up Barge 22, what lights did it have on it?

(Testimony of Louis L. Fowler.)

A. It had one light on one forward corner—that is, forward from the *sunk* end, I will say, and on the same side that was sunk.

Q. Did you go out on board these barges at any time? A. No, I didn't.

Q. And you were right alongside them, however? A. Right alongside them.

Q. Were the lights that you saw on those barges plain to be seen? A. Sure.

Q. Were you close enough to the globes on the lights to see whether they were clean or not?

A. Well, I was within the width of the barge of the lights.

Q. What did you observe about the condition of the lights?

A. They looked clean enough to me.

Q. Did you then take the barges upstream?

A. I took them upstream and tied them up at the lower end of Terminal 4.

Q. Did you notice the lights at that time?

A. Then when I left them they had the three lights on them. I looked to see before I left them. [364]

Q. The same three lights they had before?

A. The same three lights.

Q. Had anybody touched those lights at any time while the boats were in your custody?

A. Not to my knowledge.

Q. After leaving the barges at Terminal No. 4, where did you go then?

(Testimony of Louis L. Fowler.)

A. I went to the home dock.

Q. During the time that you have been on the river, what has been your observation as to the side of the river on which the river boats travel in going up and down past Post Office Bar?

A. The east side of the river.

Q. Are there any exceptions to that that you have had occasion to notice at all?

A. No, I don't believe so.

Mr. Young: You may cross examine.

Cross Examination

By Mr. Wood:

Q. Is it more convenient for them to come up on the left-hand side?

A. Much more convenient.

Q. Why is that?

A. Well, in the first place, the ship is coming down there, I figure,—whether it is right or not I don't know—but I figure that a ship needs plenty of room, and they are headed right down into that bight all the time.

Q. Will you let me interrupt you to ask you why the ship needs [365] plenty of room?

A. Well, there is quite a difference in size.

Q. What?

A. The difference in size of the vessels. So if you stay on the east side of the river you are out of way of the ship at all times, or, rather, you should be.

(Testimony of Louis L. Fowler.)

Q. That is the idea, then, that the tug and tow coming up on the left-hand side shall keep entirely out of way of the ship, is it?

A. By following the east shore they should be out of way of ships at all times.

Q. Is the slacker water over there, less current?

A. It depends on the stage of the river. If there is current in the river why it is slacker there, but if it is all slack then it is practically about the same.

Q. Is it shorter for the tugs and tows to come up on that side and reach their destination?

A. Yes.

Q. They have to travel a less distance to reach any place in Portland if they come up on the left-hand side, do they not?

A. Yes, that is right. It is the same as cutting corners.

Q. When you met the Barry K and her barges off Vancouver, as you have described, how close to her did you pass?

A. Well, offhand that would be hard to say. I suppose anywhere from fifty to a hundred feet, probably.

Q. I did not hear. [366]

A. Anywhere from fifty to a hundred feet, something like that. Not much over that, because I was going to land and I was waiting for her to get by.

Q. Which side of her did you pass?

(Testimony of Louis L. Fowler.)

A. Port and port.

Q. You passed port to port, both of you?

A. Port to port.

Q. In other words, you obeyed the narrow channel rule? A. Yes.

Q. And did you consider that fifty or a hundred feet was safe space between you to allow to pass?

A. Yes, there was plenty of room there at that particular point.

Q. There was not any particular reason for you at that time to notice and remember what lights she had on those barges, was there? No accident had happened, there was nothing to fix it in your mind, was there?

A. No, only she had a couple of barges, I noticed, because to see what she had I was going to tie up there and I didn't want to go across her bow.

Q. Well, it is rather, then, that you say she had those lights there because you think that she should have had them rather than you distinctly now remember that she had them there. Is that not a fact?

A. No, sir. [367]

Q. All right.

A. I figure it is my business to see those things for the safety of my own boat and myself and crew.

Q. Did you on approaching her notice her forward range light?

A. She had no range light.

(Testimony of Louis L. Fowler.)

Q. That is what I want to find out. Did she or did she not? A. She had two mast lights.

Q. She had no front range light burning, did she, that you saw?

A. Not that I saw. If it was lit I couldn't see it, anyway.

Q. When you saw the collision, you said you were down near the mouth of the river some place, or where did you say?

A. It was just inside the mouth.

Q. Would you mark the place where you were when you saw the collision? Will you mark her on this chart?

Mr. Wood: Just give me an ordinary pencil.

A. Oh, I suppose I was in here some place.

Q. I will just make a little mark there. Is that the place? You make the mark where you think you were.

A. Looking at the map and looking at the river is two different things for me. I would say I was approximately right along in here.

Q. Here I have marked a cross in pencil and drawn a line up from it and written "Cruiser." Is that the place?

A. That is somewhere near.

Q. And how far were you at that point from the place of the collision?

A. Oh, about a mile, I guess, or maybe a little over a mile. I [368] wouldn't say exactly how far it is. I never did measure it off.

(Testimony of Louis L. Fowler.)

Q. And you saw the Pennsylvanian first up here on the Post Office Range?

A. I saw her two range lights first.

Q. You said she was about where she should be at that time?

A. I would say from the looks of the way she was approaching that—well, I couldn't swear that she was, but I would say she was pretty close to being on her own range, where she should be.

Q. I do not suppose you could swear where she was at any time, could you?

A. I couldn't positively swear to it, no.

Q. And you could not swear to her course, either, could you? You could not swear to her course, either, could you?

A. Her compass course she was traveling?

Q. No, no. The course she came down the river.

A. No, I couldn't swear to her course.

Q. The only thing you had to gauge her course by would be her red and green lights and her mast headlights? A. That is all.

Q. And the ship was perhaps two miles away from you?

A. Approximately, something like that.

Q. You testified you only heard the two blasts from the Barry K, did you not?

A. That is all.

Q. Those are the only whistles you heard from either ship at any time? [369]

A. Those are the only whistles at any time.

Q. And how was the wind?

(Testimony of Louis L. Fowler.)

A. The wind was blowing toward the west shore.

Q. Have you an explanation why you heard only the two blasts and no other whistles?

A. None whatsoever.

Q. After you picked up the two barges at Captain Williams' request and started up the river, was it?

A. Yes, sir.

Q. Where was the Pennsylvanian at that time?

A. She proceeded on downstream.

Q. She had passed you, had she?

A. Yes. She went downstream as I was picking up No. 24.

Q. Was 24 the one you said was lying right alongside the dike?

A. No, 22 was lying aside the dike.

Q. Where was 24?

A. 24 was laying out from the west shore—well, it was far enough out that the Pennsylvanian went down between the west shore and the barge.

Q. She did. That means then that the barge must have been considerably out in the channel, then, was it not?

A. It wasn't too far out. It was out a ways. I wouldn't say just how far.

Q. You do think the Pennsylvanian went down between the barge and the west shore, do you? [370]

A. Do I think it?

Q. Yes. A. I know it.

Mr. Wood: That is all.

Wait just a moment.

That is all.

(Testimony of Louis L. Fowler.)

Redirect Examination

By Mr. Young:

Q. Mr. Fowler, in answer to a question put by counsel, you stated it would be more convenient for logs and tows to go upstream on the left-hand side. What would you say as to whether it would be either safe or practicable for tugs and tows—that is, river boats—to go up the right-hand or west side of that river in the vicinity of Post Office Bar?

A. Well, I guess it could be done, but it depends on whatever is approaching. If another vessel is coming or something, I wouldn't go under there under no circumstances.

Q. Why not?

A. Because I don't think it is any too safe.

Q. And why isn't it too safe?

A. Because you might have enough room and you might not. It depends on what you have in tow.

Mr. Wood: It depends on what?

A. It depends on what you have in tow.

Mr. Young: That is all. [371]

Recross Examination

By Mr. Wood:

Q. Then if it depends on what you have in tow you can hardly say that you would not go that way under any circumstances, can you? You might go there with some kind of a tow and not with another. Isn't that true?

(Testimony of Louis L. Fowler.)

A. Oh, if you had a little small barge or something like that you would go in there if you wanted to.

Q. Have you ever had any experience in navigating an ocean steamer?

A. I have had none.

Mr. Wood: That is all.

Mr. Young: That is all.

(Witness excused.)

JOHN KELLY,

produced as a witness in behalf of the Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. You live in Portland, Mr. Kelly?

A. Yes, sir.

Q. And what is your occupation?

A. Well, I was a watchman on the Barry K at this time, but I am a deck boy on the Claire, now.

[372]

Q. Is the Claire owned by the Western Transportation Company? A. Yes, sir.

Q. How long have you been in the employ of the Western Transportation Company?

A. Oh, off and on ten years.

Q. Were you on watch on board the Barry K at the time that the collision occurred with the Pennsylvanian? A. I was.

(Testimony of John Kelly.)

Q. When did you go on watch?

A. 6:15 at night.

Q. And when would you ordinarily have gone off watch? A. 6:15 the next morning.

Q. As the Barry K came around into the Willamette River from the Columbia and was headed up towards the place where the collision occurred, where were you on the Barry K?

A. In the pilot house.

Q. Who was there with you?

A. The pilot, Captain Reed.

Q. Captain Reed? A. Yes, sir.

Q. How long did you stay in the pilot house?

A. Oh, I would judge about ten minutes.

Q. And did you leave the pilot house then?

A. Well, he wanted me to go down below to pick—to get ready to pick up a barge at West Oregon mill. [373]

Q. Prior to the time that you had received these orders from Captain Reed, had you noticed any ship coming downstream?

A. I noticed her about a mile upstream.

Q. And do you know what the location of the Barry K was when you noticed her up the stream?

A. She was a little below Post Office Bar light.

Q. That is, the Barry K was?

A. Yes, sir.

Q. And when you saw the Pennsylvanian, at that time you did not know her identity, I suppose?

A. No, I did not know. I knew it was a ship.

(Testimony of John Kelly.)

Q. What lights did you see?

A. I see two white mast lights.

Q. Any other lights? A. No.

Q. Could you tell which direction she was proceeding, what her course was?

A. She was coming downstream. That is all I know.

Q. Do you have anything to do with the navigation of the Barry K?

A. No, sir. I have not.

Q. Do you carry any Federal license at all?

A. No, sir.

Q. Prior to the time that you went below under orders from Captain Reed, had there been any whistle signals given by either of the boats? [374]

A. Well, when I went below the Barry K blew two whistles.

Q. Where were you at the time that the Barry K blew those two whistles?

A. Down on the lower deck.

Q. What were you doing on the lower deck at that time?

A. I went down to see the deck hand, to see that he gets ready to pick up a barge at West Oregon mill.

Q. What deck hand was that?

A. Johnny Williams.

Q. Where was he at the time you saw him?

A. At the fire hold.

Q. Is that h-o-l-e or h-o-l-d?

(Testimony of John Kelly.)

A. Well——

Mr. Young: I have not been able to find out, myself, your Honor. In any event it is in the forward part——

A. It is a bulkhead——

Q. Were those doors in the forward part of the Barry K on the lower deck open at that time?

A. Well, part open.

Q. Part open? A. Yes, sir.

Q. Now, how long did you remain down below?

A. Well, I went right up on the forward deck below the pilot house.

Q. Now, will you examine this photograph, Libellant's Exhibit 3, which shows the forward part of the Barry K, and in the first place [375] show to the Court where you were when the pilot first ordered you to go down below?

A. When he ordered me to go below?

Q. Yes. Where were you then?

A. I was up here.

Q. That is in the top house?

A. Top house, yes.

Q. Is that right? A. Yes, sir.

Q. Now, will you indicate to the Court where you went when you went down below?

A. Well, I went right down the ladders. You see, it is a ladder down here. I guess you can't see it. It is a ladder. Then I went down the back stairway.

Q. Now, in coming into this fire hole, or what-

(Testimony of John Kelly.)

ever it is called—can you see that in this picture, or its location?

A. Well, no, you can't see it. Somebody is standing right across by it, that's all.

Q. The man who is in that picture is standing right by it? A. Yes, sir.

Q. Now, when you came back after having gone down into the fire hole, show the court where you went at that time.

A. Right up here. Forward.

Q. Now, that is on the second deck, is it?

A. Yes, sir. Cabin deck. [376]

Q. Cabin deck. Now, between the time that you heard these two whistles of the Barry K and the time you got up on the cabin deck forward, did you hear any more whistles?

A. I heard the Barry K blow four whistles.

Q. In the meantime had you heard any whistle from the other boat? A. No, I did not.

Q. Now, what further whistles, then, after the four whistles, did you hear?

A. I heard the Barry K blow two more whistles.

Q. And what other whistles?

A. Four more whistles from the Barry K.

Q. Any further whistling from the Barry K?

A. I think the Barry K blowed two more star-board, and then after that the—he stopped his engines, and the Pennsylvanian blowed three whistles and the Barry K answered with three whistles.

Q. And was that the last whistling that was done? A. Yes, sir.

(Testimony of John Kelly.)

Q. Now, did you, except for the three whistles from the Pennsylvanian that you have indicated, hear any other whistles from the Pennsylvanian?

A. No, sir.

Q. Is there any reason you know of why you did not hear any other whistles?

A. Well, I was below, see. I don't know—he didn't blow any, that's all. [377]

Q. Now, at the time that you heard these three whistles from the Pennsylvanian, about how far apart were the boats?

A. Well, I judge about between five hundred and a thousand feet.

Q. And at that time did you receive any orders from Captain Reed?

A. Yes, he blew the whistle for me and I answered it from the lower deck.

Q. What whistle is this you are talking about?

A. The deck whistle.

Q. That is not a whistle for another steamer?

A. No, no. That is a deck whistle; that is to call me.

Q. And did you respond to that?

A. Yes, sir. I hollered up to him. He says get them, that she is going to hit.

Q. At that time how far apart do you think the boats were?

A. Oh, about five hundred feet.

Q. And what did you do?

A. I went down the port side of the deck to call the crew.

(Testimony of John Kelly.)

Q. When you received this order, you were already on the—— A. Cabin deck.

Q. —cabin deck, weren't you?

A. Yes, sir.

Q. And that is where the men were in bed?

A. Yes, sir.

Q. And you went down the port side, you say?

A. Port side. [378]

Q. To call the men. Is that right?

A. Call the crew; yes, sir.

Q. And how far did you get before the collision occurred?

A. Well, I got about halfway down the deck and then the ships hit.

Q. Did you see Captain Williams at any time before the collision?

A. Yes. He come out. Before the collision? No, sir: I didn't.

Q. And where was he when he came out?

A. Coming out his door in the port side.

Q. Was that after the collision?

A. Yes, sir.

Q. Did you see the collision, itself?

A. Well, she hit on the port—coming down, she hit on the starboard side of No. 22, the lower door, after door.

Q. Do you know whether the Barry K was in motion or standing still at the time of the collision?

A. She was backing up.

Q. Backing up. And could you tell how far the Pennsylvanian was proceeding?

(Testimony of John Kelly.)

A. No, I could not tell.

Q. Did you notice what became of the barges after the collision?

A. Well, they went drifting down the river.

Q. Where did they finally come to a stop?

A. Well, I couldn't tell that.

Q. Now, as watchman, did you have anything to do with the matter of putting lights on the barges? [379]

A. Oh, yes. That is my duty.

Q. And did you put the lights on the barges that night? A. Yes, sir.

Q. Do you remember where the boat was at the time that you put the lights on the barges?

A. At Camas, Washington.

Q. And about what time of night was it?

A. Oh, about half past ten at night.

Q. Prior to that time the boat had been tied up there for a while, had it?

A. No, she has to bring empty barges up there and make the switch and pick up the loaded ones.

Q. In any event, preparatory to coming back to Portland it was about 10:30 that you lighted the barges? A. Yes.

Q. Tell the Court what you did about the lights on the barges. A. I put a barge——

Q. You put a barge where?

A. I put a light on the starboard outside corner of 22.

Q. Go right ahead.

(Testimony of John Kelly.)

A. And I put a light on the port outside corner of 24, on the forward end, and I put a light on the after corner of 24.

Q. And how did you fasten these lights onto the corners of the barges?

A. Well, there is a nail up there. [380]

Q. How high above the deck?

A. Oh, about six feet.

Q. And where were those nails with reference to the exact angle of the corner?

A. On the starboard outside corner.

Q. When you attached—first of all, did you have the lights with you when you went out to the barges?

A. Oh, yes. I had to carry them out to put them on.

Q. They are not kept there at times except when they are in use?

A. Oh, no. I have to refill them and clean the globes.

Q. Did you refill them and clean them that night?

A. Oh, yes.

Q. You cleaned the globes, too?

A. If they aren't clean I have some other lights to replace them with.

(The last answer was read by the reporter.)

Q. Now, this light, Libelant's Exhibit 8, is it the type of light that you had at that time?

A. Yes, sir.

Q. Will you indicate to the Court the condi-

(Testimony of John Kelly.)

tion of the globe of this light compared with the condition of the globes of the lights——

A. Just about the same.

Q. Just about the same? A. Yes. [381]

Q. When you attached these lights to the nails, did any portion of the light, itself, extend out beyond the angle so that it could be seen from the side on the forward end? A. No, it didn't.

Q. It did not. Now, did you, after placing these lights in a position that you have indicated, have occasion to go out on those barges any more before the accident happened?

A. Oh, yes. You are supposed to go out and see if they are lit.

Q. Did you do what you were supposed to do?

A. Oh, yes, sir. That is my duty.

Q. And how frequently did you go out on these barges between the time that you first lighted these lights and the time that the accident happened?

A. Oh, about an hour. Oh, about every half hour I went out.

Q. About every half hour? A. Yes.

Q. And on the times when you went out around these barges, you actually saw the lights, did you?

A. Yes.

Q. And were they all lighted?

A. Yes, every one.

Q. And were they lighted at the time you were up on the forward deck there, just before the accident?

(Testimony of John Kelly.)

A. I can't see them from the forward deck.

Q. How long had it been before you went down below under the [382] Captain's order that you had last inspected these lights?

A. After I left Vancouver.

Q. So that between the time the Barry K left Vancouver and got down to the point of collision you had actually inspected the lights?

A. Yes, sir.

Q. What was the condition of the weather that night?

A. Oh, it was kind of a breeze, a wind. That is all I know.

Q. Which direction?

A. Oh, I guess it was kind of towards the west shore.

Q. After the accident occurred, did you at any time later see the lights on the Barry K, the Barry K's barges?

A. Oh, yes. When they were downstream drifting.

Q. And how far away from you were those barges at the time you saw them drifting?

A. Well, I couldn't tell how far they were.

Q. Some considerable distance?

A. I would judge a mile.

Q. Did you again see those lights up at Terminal No. 4? A. Yes, sir.

Q. And what was the condition of the lights then? A. They were on the barges, lit.

(Testimony of John Kelly.)

Q. And were they all in the same condition that they had been before the accident?

A. Yes, sir. [383]

Q. At the time that you went to summon the members of the crew, did you go to summon Captain Williams also?

A. I went down on the deck, there, to wake up the crew, down the port side of the deck to wake up the crew. There was quite a few people in bed.

Q. Well, did you go in to wake up Captain Williams in addition to the rest of the crew?

A. Yes, but he came out in the meantime while I was going down, and the mate come out, and the cook came out, and the chief engineers came out.

Q. In other words, he came out before you had the opportunity to notify him?

A. Yes.

Q. There has been mention made in this case of a forward range light on the Barry K. Do you know where that light is?

A. You mean the stem light?

Q. Stem light.

A. Yes, sir.

Q. Was that light lighted this particular night?

A. No, sir.

Q. Why not?

A. Because I have to put them out, because the flare of that light from the barges will blind a man in the pilot house.

Q. And when you had a barge such as No. 22 on the nose of the Barry K could anyone from forward see that light even if it were lighted? [384]

(Testimony of John Kelly.)

A. No, sir.

Q. Were the other lights on the Barry K lighted, the mast lights and range lights,—running lights, I mean?

A. Yes, sir.

Q. Did you have anything to do with the lighting of those lights?

A. No. They are done by electricity. If they are out I have to report them and then replace them with globes.

Mr. Young: You may cross examine.

Cross Examination

By Mr. Wood:

Q. Mr. Kelly, what duties are yours besides looking after these lights?

A. Well, my duties is to be closely to the pilot house at all times.

Q. Do you consider that you are acting as lookout?

A. Well, I am lookout. When I ain't down below looking around I have to go down below, and there might be somebody smoking in bed, and they might start a fire. There might be a leakage or something.

Q. I infer from your answer you are sort of a general handy man to do whatever the pilot house asks you to do. Is that correct?

A. Yes, sir.

Q. Now, you said that at the time of the collision the Barry K was backing up. I did not know whether you meant merely that her engines were backing or that she was making sternway through the water.

(Testimony of John Kelly.)

A. Well, her engines was backing up at the time of the collision. [385]

Q. Is that what you meant? A. Yes.

Q. She still had headway on her, did she not?

A. Well, they have got a reverse bell there to back up.

Q. I know, but I say she was still going ahead through the water, or could you tell?

A. I couldn't tell.

Q. You said that before you started out from Camas on this journey at 10:30 P. M., you were busy handling some empty barges, did you?

A. That is when we bring them in to the mill, the mill in the slough. We bring empties in there and then pick up the loaded ones to bring them out.

Q. So that this tow that became involved in the collision was a separate thing and was made up and started out at 10:30 P. M.?

A. Yes, from Camas, Washington.

Mr. Wood: Let me see the log book, will you, please?

This does not cover the period in question.

Mr. Young: Pardon me. It starts at midnight. That is the point. I did not understand there would be any question about the use of the log prior to that time. But I will produce the other sheet to go back of that.

Mr. Wood: You have not got it now?

Mr. Young: No, I have not. I am sorry.

(Testimony of John Kelly.)

Mr. Wood: Q. Then do I understand, Mr. Kelly, that at 10:30 you placed these lights on the barges and lit them and—— [386]

A. No. I lit them, yes, but I came outside of the slough there to pick up Barge 22.

Q. When did you light these lights? That is what I want to know.

A. I lit them when you go in the slough, there, to pick up the barges.

Q. What time is that?

A. Oh, it is between 9:30 and 10 o'clock.

Q. 9:30 and 10 o'clock? A. Yes.

Q. In other words, these lanterns that we are talking about were burning from 9:30 or 10 o'clock on to the time of the collision, were they?

A. Yes, sir.

Mr. Young: If the Court please, I should like to give to counsel at this time the engine room log which does cover the period counsel is inquiring about, and I think has data from that source as to the questions he is inquiring about.

Mr. Wood: Thank you.

Q. I cannot make anything out of this unless the home dock means Camas. Does it?

A. Home dock?

Mr. Wood: I will have to wait for the other log, I guess.

Q. Do you have the duty of trimming the wicks of these lanterns? A. I do.

Q. And filling them and all? [387]

(Testimony of John Kelly.)

A. Yes, sir.

Q. Did you get this lantern here at the request of counsel and bring it to court?

A. No, I did not.

Q. Did you burn ordinary kerosene in those lanterns? A. Yes, sir.

Q. How often do you trim the wicks?

A. Every time I take them in and clean them before I light them.

Q. And did you make a round of these lights going outside around the houses of the barges?

A. I do.

Q. Every half hour? A. Yes, sir.

Q. You did that this night? A. Yes, sir.

Q. Found them burning? A. Yes, sir.

Mr. Wood: That is all.

(Witness excused.)

Mr. Young: That is all.

Mr. Wood: I am going to request the Court's permission to light that lantern with ordinary kerosene and let it burn.

The Court: When it gets cooler.

Mr. Wood: For this period. [388]

Mr. Young: If the Court please, there was some question here about reading the log book. I should like to recall the engineer for just a moment because it is his handwriting.

Will you take the stand a minute, please?

MELVIN YOUNG,

a witness in behalf of the Libelant, was thereupon recalled, and, having been previously sworn, further testified as follows:

Further Direct Examination

By Mr. Young:

Q. I am going to hand you the log, the engine room log, and ask you to read off for counsel what these notations are here on the left page.

A. That is—starting back at Camas, — from Camas?

Q. Yes.

A. Well, when we left Camas we had 12 and 23, or left 12 and 23 and got 24.

The Court: That is the last entry on the bottom of page 46? A. Yes.

Mr. Young: Q. Does that give you the time when you left Camas? A. Yes.

Q. When?

A. We arrived there at 9:10 and left at 10:30.

Q. You arrived at Camas at 9:10 and left at 10:30? A. Yes, sir. [389]

Q. On the top of page 47 of the Engineer's Log, what appears there?

A. Mott's Slough. We got 22 and arrived there at 10:45 and left about 10:50.

Q. Is that 11 over there?

The Court: Picked up Barge 22 at 10:45.

Mr. Young: Q. And left at 11. Now, where is this slough that you are talking about?

(Testimony of Melvin Young.)

A. That is the mouth of the Camas Slough.

Q. The mouth of the Camas Slough.

Mr. Wood: As I understand, the other witness said he lit the lanterns at the time that they were at the slough, which was somewhat earlier than leaving Camas.

The Court: They picked up the barges at two different places, two different times.

Mr. Young: That is all, Mr. Young.

(Witness excused.)

Mr. Young: If the Court please, it being now ten minutes of twelve, I should like to make this suggestion: that we have the opportunity to wait until tomorrow morning to rest. I think that we have completed our case, but there may be some tag ends that I would like to go into and it would take just a few minutes in any event.

The Court: If they have completed it, Mr. Wood, keeping in [390] mind on my part you have witnesses here from out of the city, would you like to attempt to finish in two days your part of the testimony?

Mr. Wood: Well, I should like to, if it can be done without hurrying. But I attach too much importance to the case to try to hurry over any phase of it.

The Court: Then it is very doubtful.

Mr. Wood: It is doubtful.

The Court: We will not plan to hold court on Saturday, then.

(Thereupon, at 11:50 o'clock A. M., Court was adjourned until tomorrow, Friday, July 18, 1941, 8 o'clock A. M.) [391]

Friday July 18, 1941, at 8 o'clock A. M., pursuant to adjournment, the following further proceedings were had:

Mr. Young: Libelant rests, your Honor.

Mr. Wood: We will call Captain Norberg of the Pennsylvanian.